

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-15693 Kami Emein

Chapter 7

#1.00 HearingRE: [36] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Volvo / S90 T5 Momentum and Proof of Service.

Docket 36

Tentative Ruling:

Tentative Ruling:

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

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

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT... Kami Emein

Chapter 7

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

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Trustee(s):

John J Menchaca (TR)

Represented By
Uzzi O Raanan ESQ
Sonia Singh

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-22646 Universal Broadcasting Network Inc

Chapter 7

#2.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1438 North Gower Street, Los Angeles, California; Building 35: Rooms 156A, 156B, 156C, 159A, 159B, and 159C. . (Shapiro, Scott)

Docket 13

Tentative Ruling:

For the reasons set forth herein, the Motion is DENIED without prejudice. The proof of service [Doc. No. 16] does not reflect that the Motion was served on the Debtor or the Debtor's attorney as required by Local Bankruptcy Rule 4001-1(c)(1)(C)(i). The Movant may refile the Motion with service upon the Debtor and the Debtor's attorney in accordance with applicable local and federal rules.

Party Information

Debtor(s):

Universal Broadcasting Network Inc

Represented By
Leroy Bishop Austin

Trustee(s):

Elissa Miller (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-22870 Patricia Ann Jones

Chapter 7

#3.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 33707 Hubbard Road, Acton, CA 93510 . , its successors and/or assigns (Glowin, Nichole)

Docket 10

Tentative Ruling:

1/2/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$305,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$453,914.47. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT... Patricia Ann Jones

Chapter 7

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

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

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

Party Information

Debtor(s):

Patricia Ann Jones

Represented By
Barry E Borowitz

Trustee(s):

Jason M Rund (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-22987 Evangelina Magana Vazquez

Chapter 7

#4.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: N 2017 Chevrolet Colorado; Vin No. 1GCGSDEN0H1268721 with Exhibits and Proof of Service. (Zahradka, Robert)

Docket 15

Tentative Ruling:

1/2/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT... Evangelina Magana Vazquez

Chapter 7

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

Party Information

Debtor(s):

Evangelina Magana Vazquez

Represented By
Francis Guilardi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-23565 Raymond Alvarez and Stephanie Alvarez

Chapter 7

#5.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 BMW 3 Series Sedan 4D 328xi GT AWD . (Skigin, Cheryl)

Docket 8

Tentative Ruling:

1/2/2019

Tentative Ruling:

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

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

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT... Raymond Alvarez and Stephanie Alvarez

Chapter 7

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

Party Information

Debtor(s):

Raymond Alvarez

Represented By
Jennifer Ann Aragon

Joint Debtor(s):

Stephanie Alvarez

Represented By
Jennifer Ann Aragon

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-23852 Du Un Kim

Chapter 7

#6.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Hyundai Sonata .

Docket 11

Tentative Ruling:

1/2/2019

Tentative Ruling:

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

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

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

The Court notes that Debtor's case was dismissed on 12/17/2018. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT...

Du Un Kim

Chapter 7

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

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

Party Information

Debtor(s):

Du Un Kim

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-24041 Diana Adriana Condon

Chapter 7

#7.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Chevrolet Trax, VIN KL7CJKSB9JB700154 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

1/2/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

CONT... Diana Adriana Condon

Chapter 7

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

Party Information

Debtor(s):

Diana Adriana Condon

Represented By
David H Chung

Trustee(s):

Elissa Miller (TR)

Pro Se

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

Monday, January 7, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

#8.00 Hearing
RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8935 Washington Blvd, Pico Rivera, CA 90660 . (Sharf, Mark)

Docket 11

***** VACATED *** REASON: PER ORDER ENTERED 1-4-19**

Tentative Ruling:

1/2/2019

Hearing required.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Trustee(s):

David M Goodrich (TR)

Pro Se

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:14-32240 Chang Bae Moon

Chapter 7

Adv#: 2:15-01108 Romex Textiles, Inc. v. Park

#1.00 Hearing re [42] appearance and examination and enforcement of judgment re judgment debtor JISOOK PARK.

Docket 0

Tentative Ruling:

1/7/2019

Tentative Ruling:

Appearances required.

Party Information

Debtor(s):

Chang Bae Moon

Represented By
Young K Chang

Defendant(s):

Jisook Park

Represented By
Young K Chang

Joint Debtor(s):

Jisook Park

Represented By
Young K Chang

Plaintiff(s):

Romex Textiles, Inc.

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:18-11903 Oscar Nahun Franco

Chapter 7

#2.00 HearingRE: [33] Motion for Turnover of Property Chapter 7 Trustee's Motion For (1) Turnover Of Property (2017 Tax Refund) Of The Estate, And (2) Revocation Of Discharge Of Debtor Pursuant To 11 U.S.C. Section 727 In The Event The Tax Refund Is Not Turned Over; Declaration Of Howard M. Ehrenberg In Support Thereof (Ehrenberg (TR), Howard)

Docket 33

Tentative Ruling:

1/7/2019

The Trustee's request for an order compelling the Debtor to turnover the Tax Refund is GRANTED. The Trustee's request that the Court revoke the Debtor's discharge if the Debtor fails to turnover the Tax Refund, upon submission of a declaration from the Trustee attesting to the Debtor's non-compliance, is DENIED because Bankruptcy Rule 7001(4) requires the Trustee to seek revocation of a discharge by way of an adversary proceeding.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for (1) Turnover of Property (2017 Tax Refund) of the Estate, and (2) Revocation of Discharge of Debtor Pursuant to 11 U.S.C. §727 (In the Event the Tax Refund is Not Turned Over) [Doc. No. 33] (the "Motion")
 - a) Notice of Motion [Doc. No. 34]

I. Facts and Summary of Pleadings

Oscar Nahun Franco (the "Debtor") commenced a voluntary Chapter 7 petition on February 21, 2018. The Debtor received a discharge on June 4, 2018.

The Chapter 7 Trustee (the "Trustee") moves for an order compelling the Debtor to turnover to the estate a federal income tax refund in the amount of \$8,540 (the "Tax Refund"). The Trustee further requests that if the Tax Refund is not turned over to the Trustee within ten days following the entry of an order approving the Motion, the Court enter an order revoking the Debtor's discharge, pursuant to §727(d)(2), upon the Trustee's submission of a declaration attesting to the Debtor's non-compliance.

No Opposition to the Motion is on file.

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

CONT... **Oscar Nahun Franco**

Chapter 7

II. Findings and Conclusions

Section 542 provides: "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title . . . , shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." The "property" referred to in §542 "is generally understood to mean 'property of the estate,' as defined in section 541." *Collier on Bankruptcy* ¶ 542.02[2] (16th rev'd ed.).

The Bankruptcy Code requires the Debtor to cooperate with the Trustee "as necessary to enable the trustee to perform the trustee's duties under this title . . ." § 521(a)(3). Among other duties, the Trustee has the obligation to "collect and reduce to money the property of the estate." §704(a)(1) and (a)(4).

Property of the estate includes, among other things, "any interest in property that the estate acquires after the commencement of the case." §541(a)(7).

Here, the Debtor received the Tax Refund post-petition. The Tax Refund is therefore property of the estate pursuant to §541(a)(7). Pursuant to §542, the Debtor is required to turnover the Tax Refund to the Trustee. The Court ORDERS the Debtor to turnover the Tax Refund to the Trustee within ten days of entry of the order granting this Motion.

The Trustee requests that if the Debtor fails to timely turnover the Tax Refund, the Court enter an order revoking the Debtor's discharge pursuant to §727(d)(2), upon the Trustee's submission of a declaration attesting to the Debtor's non-compliance. Section 727(d)(2) provides for revocation of a discharge if the Debtor "knowingly and fraudulently" fails to deliver property of the estate to the Trustee.

Bankruptcy Rule 7001(4) requires the Trustee to seek revocation of the Debtor's discharge by way of an adversary proceeding. The Trustee's request for revocation of the Debtor's discharge upon submission of a declaration is denied as procedurally improper.

III. Conclusion

For the reasons set forth above, the Debtor shall turnover to the Trustee the Tax Refund within ten days of entry of the order granting this Motion. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

CONT... Oscar Nahun Franco

Chapter 7

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

Party Information

Debtor(s):

Oscar Nahun Franco

Represented By
Raymond Perez

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:18-19180 Mallory Regina Jones and Douglas Ryan Jones

Chapter 7

#3.00 Hearing
RE: [20] Trustee's Motion to Dismiss Case (Leslie (TR), Sam)

Docket 20

***** VACATED *** REASON: DISMISSED 12-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mallory Regina Jones	Pro Se
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Joint Debtor(s):

Douglas Ryan Jones	Pro Se
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Trustee(s):

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#4.00 HearingRE: [183] Application for Compensation of: Final Fees and Expenses (11 U.S.C. § 330) (with Proof of Service) for Sheila Esmaili, General Counsel, Period: 11/10/2016 to 12/6/2018, Fee: \$89,880.00, Expenses: \$890.81.

Docket 183

Tentative Ruling:

1/7/2019

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

Fees: \$89,880.00

Expenses: \$890.81

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

Party Information

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili
Sanaz S Bereliani

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#5.00 HearingRE: [186] Motion For Final Decree and Order Closing Case. Notice Of Motion And Motion In Chapter 11 Case For The Entry Of: A Final Decree And Order Closing Case; Proof Of Service;

Docket 186

Tentative Ruling:

1/7/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion in Chapter 11 Case for the Entry of A Final Decree and Order Closing Case [Doc. No. 186] (the "Motion")
- 2) Reorganized Debtor's Chapter 11 Post-Confirmation Status Report [Doc. No. 118]

I. Facts and Summary of Pleadings

On May 29, 2018, the Court entered an *Order Confirming Debtor's Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 169] (the "Confirmation Order"). The Plan provided for entry of a discharge upon the date of confirmation. The Plan requires the Debtor to make monthly payments to general unsecured creditors over a five-year period. The Debtor states that it is current on all plan payments. The Debtor moves for entry of a final decree and an order closing the case. No Opposition to the Motion is on file.

II. Findings and Conclusions

Entry of a final decree is appropriate. Pursuant to §350(a) and Bankruptcy Rule 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been

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CONT...

32 Cold, LLC

Chapter 11

transferred;

- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

Here, the Confirmation Order is final; the Debtor has commenced making payments under the Plan; the Debtor has commenced management of its business consistent with the terms of the Plan; and there are no outstanding adversary proceedings or contested matters that require that the case remain open. Although not all plan payments have been completed, entry of a final decree and an order closing the case is appropriate under the circumstances.

Having reviewed the Post-Confirmation Status Report submitted in connection with the Status Conference set for January 15, 2019, the Court finds that the Debtor is performing under the Plan. The January 15 Status Conference is VACATED.

The Debtor shall submit a proposed final decree and order closing the case, which shall incorporate this tentative ruling by reference, within seven days of the hearing. The Court will prepare and enter an order vacating the January 15 Status Conference.

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

Party Information

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili
Sanaz S Bereliani

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2:18-17345 Fu Kong Inc.

Chapter 11

#6.00 Hearing
RE: [75] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement DEBTORS MOTION TO: (1) EXTEND EXCLUSIVITY PERIODS FOR DEBTOR TO FILE A CHAPTER 11 PLAN AND OBTAIN ACCEPTANCE THEREOF; AND TO (2) VACATE THE DECEMBER 19 DEADLINE TO OBTAIN APPROVAL OF A DISCLOSURE STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LILLIAN HSU

fr. 12-5-18

Docket 75

Tentative Ruling:

1/7/2019

For the reasons set forth in the Court's tentative ruling for Calendar No. 7,
DENY motion as MOOT.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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#7.00 Hearing

RE: [78] Motion to Dismiss Debtor Notice of Motion For Order Dismissing Or Converting Debtor's Chapter 11 Case Pursuant to 11 U.s.C. Sec. 1112; Memorandum of Points And Authorities; Declarations of Margaret Waye, David B. Bloom (Adler, James)

FR. 12-5-18

Docket 78

Tentative Ruling:

1/7/2019

For the reasons set forth below, the Motions are GRANTED and the case is CONVERTED to a case under chapter 7.

Pleadings Filed and Reviewed

Cathay Motion

1. Notice of Motion for Order Dismissing or Converting Debtor's Chapter 11 Case Pursuant to 11 U.S.C. § 1112 [Doc. No. 78] (the "Cathay Motion")
2. Debtor's Opposition to Cathay Bank's Motion to Dismiss or Convert Chapter 11 Case [Doc. No. 84] (the "Opposition to Cathay Motion")
 - a. Proof of Service of Opposition to Cathay Motion [Doc. No. 85]
3. Stipulation to Continue Hearing Dates; Set Briefing Schedule; and Extend Cash Collateral Order Pending Continued Hearing [Doc. No. 87]
4. Order on Stipulation to Continue Hearing Dates; Set Briefing Schedule; and Extend Cash Collateral Order Pending Continued Hearing [Doc. No. 91]
5. Notice of Continuance Hearing on Creditor Cathay Bank's Motion to Dismiss or in the Alternative Convert Chapter 11 Case [Doc. No. 95]
6. Reply and Supplement in Support of Motion for Order Dismissing or Converting Debtor's Chapter 11 Case Pursuant to 11 U.S.C. § 1112 [Doc. No. 108] (the "Cathay Reply")

UST Motion

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7. United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Convert, or in the Alternative, Dismiss with a Refiling Bar [Doc. No. 89] (the "UST Motion")
8. Notice of Joinder of Creditor Cathay Bank in Motion of United States Trustee to Convert or In the Alternative Dismiss with a Refiling Bar [Doc. No. 93]
9. Debtor's Opposition to United States Trustee's Motion to Convert or Dismiss Case [Doc. No. 94] (the "Opposition to UST Motion")
10. Notice of UST Motion [Doc. No. 96]
11. United States Trustee's Reply to Debtor's Opposition to United States Trustee's Motion to Convert or Dismiss Chapter 11 Case [Doc. No. 99] (the "UST Reply")
12. Order Continuing United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Convert, or in the Alternative, Dismiss with a Refiling Bar [Doc. No. 100]
13. Notice of Continued hearing on UST Motion [Doc. No. 101]
14. Reply Memorandum in Support of Motion to Dismiss or in the Alternative Convert Chapter 11 Case Pursuant to 11 U.S.C. § 1112 [Doc. No. 99] (the "Cathay Reply to UST Motion")

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession, Fu Kong, Inc. (the "Debtor"), filed this voluntary chapter 11 case on June 26, 2018 (the "Petition Date"). The Debtor is an importer, wholesaler and designer of women's apparel under the brands "Lu Lu" and "Shu Shu." The Debtor has 29 years of experience in the industry and has created designs and sold women's apparel under various labels to high end retailers such as Nordstrom, Saks, Lord & Taylor, Dillard's, Macy's and Stein Mart. Lillian Yu-Li Hsu ("Mrs. Hsu") is the Debtor's president, sole shareholder and sole director. George Hsu ("Mr. Hsu," and together with Mrs. Hsu, the "Hsus") was, until his termination on August 1, 2018, the Debtor's secretary.

The Debtor's bankruptcy filing was precipitated by the Debtor's cash flow problems due to a slowdown in business in recent months, the cancellations of orders resulting from a production issues in China that caused a delayed shipment of inventory, and Mr. Hsu's health issues.

On June 1, 2018, secured lender, Cathay Bank (hereinafter, "Cathay"), filed a

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lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC07032 (the "State Court Action"), for failing to make payments on a business loan. Cathay sought possession of the Debtor's assets, appointment of a receiver, and foreclosure of a commercial warehouse and the Hsus' principal residence which the Hsus pledged as collateral for the loan. That action was stayed by the Debtor's bankruptcy filing.

Shortly after the Petition Date, the Debtor filed a motion to use Cathay's cash collateral [Doc. No. 11] (the "Cash Collateral Motion"). At an initial hearing on July 13, 2018, the Court granted the Cash Collateral Motion on an interim basis, over Cathay's objection, and set a continued hearing for August 9, 2018 [Doc. Nos. 20 and 21]. The matter was later continued to August 16, 2018. At the hearing on August 16, 2018, the Court authorized the Debtor's continued use of cash collateral through October 16, 2018, provided that the Debtor make monthly adequate protection payments to Cathay in the amount of \$6,780.32 in accordance with the dates and terms of the underlying loan agreement [Doc. Nos. 61 and 67]. The Court also set a deadline of December 19, 2018, for the Debtor to obtain approval of a disclosure statement in support of a chapter 11 plan. *Id.* The parties have twice stipulated to the Debtor's continued use of cash collateral [Doc. Nos. 71, 72, 87 and 91]. The Debtor is currently authorized to use Cathay's cash collateral through January 8, 2019.

On July 23, 2018, Cathay filed a motion to appoint a chapter 11 trustee or, in the alternative, to appoint an examiner [Doc. No. 32]. The matter was fully briefed. At a hearing on August 21, 2018, the Court denied Cathay's motion after finding that Cathay had failed to establish sufficient "cause" within the meaning of § 1104(c) [Doc. Nos. 63 and 65].

On October 23, 2018, the Debtor filed a Motion to: (1) Extend Exclusivity Periods for Debtor to File a Chapter 11 Plan and Obtain Acceptance Thereof; and to (2) Vacate the December 19 Deadline to Obtain Approval of a Disclosure Statement [Doc. No. 75] (the "Exclusivity Motion"). Cathay opposed the Exclusivity Motion [Doc. No. 78]. The Debtor originally self-calendared a hearing on the Exclusivity Motion for December 5, 2018 [Doc. No. 80]. However, the parties stipulated to continue the hearing to January 8, 2019, to be heard concurrently with the hearing on the Debtor's continued use of cash collateral and Cathay's Motion (defined below).

Cathay Motion

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Cathay seeks an order dismissing this case with a 180-day refile bar pursuant to § 1112(b). In the alternative, Cathay requests an order converting this case to a case under chapter 7. Cathay argues that "cause" exists within the meaning of § 1112(b) as follows:

- The Debtor's financial statements reveal that the Debtor has no realistic chance of successfully reorganizing its affairs. The Debtor's monthly operating reports (the "MORs") for the months of July, August and September 2018 reflect net losses.
- The Debtor has violated this Court's cash collateral order by failing to make the required \$6,780.32 adequate protection payment to Cathay by October 18, 2018, due to alleged "cash flow" problems.
- The Debtor's ability to reorganize its affairs is premised upon its ability to generate sufficient proceeds from the sale of two parcels of real property – the Hsus' principal residence and commercial warehouse – to pay Cathay's loan in full. However, the alleged value of those properties is significantly lower than the Debtor estimates and there are a number of obstacles preventing those sales from moving forward.

The Debtor timely opposed the Cathay Motion. In response to Cathay's arguments, the Debtor responds as follows:

- The Cathay Motion is procedurally deficient because Cathay did not serve the motion on all creditors as required by Rules 9013 and 2002(a)(4) of the Federal Rules of Bankruptcy Procedure.
- The Debtor acknowledges that its operated at a loss from June – September 2018 for a number of reasons, but states that its October 2018 MOR reflects positive net profits and anticipates future profits will improve. Debtor is taking steps to improve sales by (i) hiring a new commission-based sales person to focus on selling inventory; (ii) expanding its sales channels to higher trafficked websites; and (iii) obtaining raw materials from countries not affected by recent tariffs. Debtor also anticipates increased sales revenue from a major client. Therefore, the Debtor contends that Cathay has not established that there will be a continuing loss or diminution to the estate.
- The Debtor also rejects Cathay's assertions that it has not made any progress

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towards rehabilitation or that it has no reasonable prospect of reorganizing. The Debtor states that since the Petition Date, it has (i) renegotiated its commercial lease to reduce monthly rental expense; (ii) identified a purported reasonable basis to eliminate its obligation to pay property tax; (iii) vacated and rejected its lease of commercial showroom space; (iv) laid off three employees; (v) attempted to negotiate with Cathay regarding the sale of the Hsus' warehouse and personal residence to reduce or pay off Cathay's loan, including presenting Cathay with short sale proposals to avoid foreclosure; and (vi) undertaken the efforts described above to improve future profitability.

- The Debtor states that if income remains insufficient to propose a reorganization plan by March 31, 2019, the Debtor will propose a liquidation plan or pursue § 363 sales.
- The Debtor concedes that it did not comply with this Court's cash collateral order but states that its noncompliance was not willful and or repeated. Rather, Debtor states that it simply did not have the funds to make the payment and that it reached out to the Bank in good faith to explain its situation. The Debtor states that it cured the noncompliance by tendering both the October and November payments to Cathay on November 21, 2018.
- The Debtor contends that even if "cause" has been established, the Court may refuse to dismiss or convert the case in light of the unusual circumstances present in this case. Specifically, the Debtor argues that Cathay's loan will likely be paid off or substantially reduced by the sale, foreclosure, or short sale of the Hsus' warehouse and residence. Once that occurs, the Debtor will be in a better position to propose a plan of reorganization that will benefit creditors.
- The Debtor concedes that the Hsus have proposed low short sale prices for the warehouse (\$1,500,000) and residence (\$699,000) but contends that the list prices do not reflect the actual values that the properties will likely sell for in this market. In fact, the Hsus received a purchase offer of approximately \$2,200,000 for the warehouse.
- If the Court finds that "cause" exists to dismiss or convert this case, the Debtor requests that the Court order the case dismissed. The Debtor states that

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dismissal would be in the best interest of creditors because all of its assets and revenue are fully encumbered and there will be no assets for a chapter 7 trustee to administer for the benefit of creditors.

- Finally, the Debtor argues that Cathay has not established any bad faith warranting dismissal with a 180-day refiling bar.

On December 28, 2018, Cathay filed a Reply and supplemental declaration of Margaret Waye (the "Waye Decl.") responding to the Opposition to Cathay Motion as follows:

- Cathay incorporates by reference the arguments set forth in its Cathay Reply to UST Motion [Doc. No. 99].
- On December 26, 2018, Cathay conducted non-judicial foreclosure sales of the Hsus' commercial warehouse and residence. Cathay was the highest bidder and purchased the properties by credit bid for \$564,523.60 and \$517,495.20, respectively. Waye Decl., ¶ 2.
- After crediting the proceeds of the trustee's sales, the Debtor still owes Cathay \$710,564.26. Waye Decl., ¶ 3. [**Note 1**]

UST Motion

The Office of the United States Trustee (the "UST") seeks an order converting this case to a case under chapter 7 pursuant to § 1112(b)(4)(A) based upon an apparent substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation. In support, the UST attached the Debtor's MORs as well as spreadsheets that it created utilizing the figures from the Debtor's MORs which it states depict the Debtor's post-petition cash flow and profitability. Declaration of Gary Baddin (the "Baddin Decl."), Exs. 1-7. Based upon its review and analysis of the Debtor's MORs and as set forth in the spreadsheets, the UST identified the following issues:

- The October 2018 MOR shows a cumulative post-petition net operating loss of (\$90,337.68).

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- Debtor's debtor-in-possession bank account only shows \$4,627.89 of cash after five months in bankruptcy.
- If it weren't for reported cash receipts unrelated to sales, the Debtor's cash position would have been negative.
- The Debtor has been unable to timely make payroll.
- The Debtor has accounts payable in the amount of \$180,599.92.
- The Debtor has been unable or unwilling to liquidate its inventory during the pendency of this case.
- The Debtor has suffered losses in four out of the five months it has been in bankruptcy.

Baddin Decl., ¶¶ 3-6.

The UST also notes that the MORs contain a number of mathematical errors and reveal improper or undocumented transactions. Baddin Decl., ¶¶ 4a, 4b. For example, Mr. Baddin states:

[D]uring the month of July, Debtor transferred the amount of \$8,780.32, in two payments from the Payroll account to the DIP General account. Normally, funds should be transferred *from* the General *to* the Payroll account. These transactions were undocumented, and the reason for such transfers is presently unclear.

...

Further, the payroll ledger for the month of August inexplicably shows only the monthly bank charge in the amount of \$14.00 when the bank statements for the month clearly shows the total of \$7,335.60 in 'subtractions.'

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Finally, I found that Debtor made an undocumented loan repayment in the amount of \$2,3000 on 9-27-18.

Baddin Decl., ¶ 4b.

The UST asserts that the following issues demonstrate that the Debtor is diminishing in value and that its bleak financial condition makes it unlikely that the Debtor could confirm a plan of reorganization. The UST therefore requests that this case be converted to a case under chapter 7. The UST contends that conversion, rather than dismissal, is in the best interest of creditors because the Debtor's October MOR reflects \$1,412,869.50 in inventory that a trustee should be afforded an opportunity to investigate and try to liquidate for the benefit of creditors.

On December 4, 2018, Cathay filed a joinder with the UST Motion [Doc. No. 93].

The Debtor timely opposed the UST Motion. In response to the UST's arguments, the Debtor makes largely the same arguments as set forth above in opposition to the Cathay Motion. In addition to the arguments set forth above, the Debtor adds the following new arguments:

- It is unclear whether the UST Motion is procedurally deficient because the UST's proof of service does not indicate that all creditors were served.
- The Debtor's future business prospects are not grim because Debtor: (i) secured purchase orders for fabrics for January and February 2019 which will generate \$298,200 in income; (ii) secured purchase orders for finished

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garments for Spring 2019 which will generate \$40,780.30 in income; (iii) anticipates securing purchase orders for finished garments from customers Soft Surroundings and Ameri Mark, for \$46,000 and \$5,200; and (iv) will be meeting with TJ Maxx and Seventh Avenue to discuss potential business relationships.

- With respect to the prospect of paying off Cathay's loan through the sale of properties, the Debtor states that although Cathay has rejected its short sale proposals, it can agree to sales at prices commensurate with market value or proceed with foreclosure proceedings at higher sales prices. Debtor concedes that George Hsu filed a chapter 13 bankruptcy case on November 13, 2018 (Case No. 2:18-bk-23314-WB), but expects the case will soon be dismissed which will allow Cathay to proceed with its foreclosure proceedings.

The Debtor also responds to the alleged mathematical errors and improper or undocumented transfers highlighted in the Baddin Declaration by stating that the issues were the result of accounting errors, a mistaken deposit by a bank teller into the wrong DIP account, or delayed cashing of outstanding checks. Declaration of Lillian Hsu ("Hsu Decl."), ¶¶ 15- 21. Mrs. Hsu also acknowledges that employee wages were not timely paid but states that the Debtor is now current on all post-petition employee wages. Hsu Decl., ¶ 18. Finally, Mrs. Hsu states that the \$2,300 loan repayment was made in error because the Debtor did not know it would be an issue, but states that the Debtor will not do it again. Hsu Decl., ¶ 19.

The UST submitted the following arguments in Reply to the Debtor's Opposition. First, the UST states that although the Debtor may have made diligent efforts to reorganize, there is no dispute that cause exists under § 1112(b)(4)(A). The UST contends that despite not timely making post-petition rent payments or post-petition payroll, the Debtor's ending balance for its DIP account is only \$959.82. Accordingly, the UST contends that the Debtor is presently administratively insolvent with no ability to pay all of its legal fees incurred to date. Second, the UST notes that even though the Debtor was unable to timely make rent and payroll payments, it did pay \$3,894.90 in October 2018 for "miscellaneous operating expenses," which

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includes a \$545 lease payment for Mrs. Hsu's car and another \$190.38 for car expenses. The UST asserts that these "miscellaneous expenses" total \$14,286.83 throughout the pendency of this case. Third, the UST argues that the evidence submitted in support of Debtor's Opposition does not demonstrate a reasonable likelihood of rehabilitation, because the Debtor relies on pure conjectures about the business that may come in. Finally, the UST reiterates that, based upon the Debtor's valuation of its assets, conversion is in the best interest of creditors.

On December 12, 2018, Cathay submitted a reply in support of the UST Motion [Doc. No. 99]. Cathay contends that despite the evidence provided in support of the Debtor's Opposition, the Debtor has not demonstrated a reasonable prospect of reorganizing. Cathay argues that Debtor's assertion that it operated at a profit in October is illusory because the Debtor's post-petition liabilities outweigh any purported net gross profit. Cathay also argues that Debtor's asserted net profit figure is dependent upon the accuracy of the Debtor's accounting and there are a number of discrepancies between Debtor's September and October MORs that cast their reliability into doubt. Further, even if the Debtor's figures are accurate, Cathay contends that the \$1,837.95 October profit is insufficient to refund a plan or satisfy post-petition liabilities.

Cathay also argues that the Debtor's claims of progress towards reorganizing its affairs are illusory. For example, Cathay notes that although Debtor purports to have renegotiated its commercial lease, the Debtor was essentially negotiating with itself because the Hsus own the warehouse and the MORs do not reflect that the Debtor has even been paying rent. Similarly, Cathay asserts that although the Debtor contends that the Hsus will sell the warehouse and residence and pay Cathay in full, such sales would not come close to paying off its claim. Cathay also asserts that the Debtor's claim anticipated increase in sales in 2019 is not supported by evidence to establish that the business prospects will come to fruition.

II. Findings of Fact and Conclusions of Law

A. Notice of the Motions is Adequate

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The Debtor contends that the Cathay Motion was not properly served on all creditors as required by Rule 2002(a)(4) of the Federal Rules of Bankruptcy Procedure ("FRBP") and that the proof of service attached in support of the UST does not indicate that it was served on all creditors as required by FRBP 2002(a)(4).

Based upon this Court's review of the initial proofs of service filed in support of the Cathay and UST Motions, it appears the Debtor is correct that not all creditors were served with the motions. However, on December 9 and 15, 2018, the bankruptcy noticing center issued notice of the UST Motion [Doc. No. 97] and notice of the continued January 8, 2019, hearing on the UST Motion [Doc. No. 102]. Accordingly, the Court finds that all creditors received timely notice of the possibility of this case being converted or dismissed.

As of the preparation of this tentative ruling, no other opposition or response is on file. Therefore, pursuant to Local Bankruptcy Rule 9013-1(h), any party who failed to timely file and serve an opposition is deemed to consent to the granting or denial of the motions.

B. Cause Exists Under § 1112(b) to Convert This Case

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including, in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(E) failure to comply with an order of the court;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." 11 U.S.C. § 1112(b)(4).

The Court finds that the UST and Cathay have established sufficient "case" to dismiss or convert the Debtor's case under 11 U.S.C. § 1112(b)(4)(A). Based upon the Court's review of the pleadings and evidence in the record, the Court finds as follows. First, the Debtor does not dispute that following the Petition Date, it experienced substantial losses resulting from various issues with the sale of its inventory. Although the Debtor contends that as of October 2018 it was operating at a

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net profit, as the UST and Cathay highlight, the Debtor's MOR's appear to contain a number of errors that render those reports unreliable. Moreover, the Debtor concedes that during this period it failed to timely pay post-petition payroll obligations and missed two Court ordered adequate protection payments owing to Cathay Bank.

Second, although the Debtor contends that it has taken several steps to increase its profitability, the Debtor has not presented sufficient evidence to overcome the UST and Cathay's evidence and persuade this Court that it has a reasonable likelihood of rehabilitating its business within a reasonable period of time. The Court finds that the Hsu Declaration filed in support of the Debtor's oppositions to the UST and Cathay Motions is imprecise and largely unhelpful. For example, Mrs. Hsu states that the Debtor has secured a number of new purchase orders that will generate new income in 2019 but fails to explain whether the anticipated income is revenue or net income, so the Court cannot determine whether these new orders will enable the Debtor to generate a profit. Furthermore, Mrs. Hsu does not attach any evidence for this Court to determine whether the purchase orders are from new clients that will actually improve the Debtor's financial condition, or existing clients that will only maintain the Debtor's financial condition.

Additionally, Mrs. Hsu states that the Debtor recently hired a new sales person to focus on selling inventory but does not provide any details regarding the qualifications of the sales person or a declaration of past performance. Mrs. Hsu also states that the Debtor will be expanding its sales channels through a website that has consistent traffic and an established e-commerce business but fails to identify which website she is referring to, what type of customers it attracts, or any evidence of anticipated sales revenues.

The Court also notes that the Debtor's past projections for future business operations do not appear to have materialized. For example, in its motion for authority to use cash collateral filed on July 26, 2018, the Debtor stated "[b]eginning September or October 2018, Debtor projects it will begin generating up to \$100,000 to \$200,000 in monthly gross revenue at a 15% or 20% profit margin through selling custom fabrics. In August 2018, Debtor will be attending an apparel trade show in Las Vegas to showcase its new inventory of trendy clothing and samples of its custom fabrics." See Doc. No. 40, p. 5: 16-21. The Debtor makes no mention of these past projections in its current pleadings, so the Court is left to conclude that the Debtor's

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efforts were unsuccessful without any explanation as to why that occurred.

Finally, the Debtor's oppositions rely heavily on the assumption that any sale of the Hsus' warehouse and residence would generate sufficient net sales to pay off or largely satisfy Cathay's loans, but as evidenced by Cathay's Reply, those assumptions did not materialize, and Cathay still holds an approximate \$710,000 claim against the Debtor's estate. Accordingly, even if the Debtor were able to increase its profitability in the next few months, the Debtor has not adequately demonstrated an ability to generate sufficient profit needed to propose a viable plan of reorganization that would garner Cathay's support. Furthermore, the Debtor was aware of Cathay's efforts to foreclose upon the warehouse in which it operates its business but failed to address what impact foreclosure would have upon the Debtor's ability to continue to operate.

All of the foregoing reasons lead this Court to conclude that the Debtor does not have a reasonable likelihood of reorganizing its affairs and that permitting the Debtor an additional three months to improve its operations will likely only result in higher administrative expenses to the estate.

Having determined that cause exists, the Court must next determine whether dismissal or conversion serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The Court finds that conversion to chapter 7 would be in the best interest of creditors. The Debtor contends that it has inventory worth approximately \$1,400,000. In light of the recent foreclosures that reduced Cathay's claim to approximately \$710,000, it appears there may be unencumbered assets that a trustee could administer for the benefit of creditors.

III. Conclusion

For the reasons set forth above, the Motions are GRANTED and the case is

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CONVERTED to a case under chapter 7. Debtor's counsel is directed to file a fee application within thirty days of the entry of the order converting the Debtor's case.

After the hearing, the Court will prepare an order converting this case.

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

Note 1: On December 31, 2018, the Debtor file its reply in support of its continued use of cash collateral [Doc. No. 109] asserting that Cathay's pay-off statement in somewhat misleading because Cathay fails to disclose that it held the first-priority senior liens on both properties. Accordingly, the Debtor contends that Cathay received approximately \$2,400,000 as a result of its December 26, 2018, foreclosure sales. However, this argument appears to be irrelevant because the Debtor does not assert that this additional benefit reduced the amount *the Debtor* owes Cathay. The Court declines to make any findings as to what the Debtor's principals owe Cathay in connection with the first-priority senior liens in view of the foreclosures.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#8.00 Hearing
RE: [40] Motion to Use Cash Collateral NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING FURTHER INTERIM USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT REGARDING CASH COLLATERAL; DECLARATION OF GEORGE HSU; DECLARATION OF FRANK AVINA; DECLARATION OF TONY HWANG (Lo, Michael)

fr. 8-9-18; 8-16-18; 10-16-18; 12-12-18

Docket 40

Tentative Ruling:

1/7/2019

For the reasons set forth in the Court's tentative ruling for Calendar No. 7, DENY motion as MOOT.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#9.00 Hearing
RE: [89] U.S. Trustee Motion to dismiss or convert under 11 U.S.C. Sec.
1112(b) . (united states trustee (hy))

FR. 12-19-18

Docket 89

Tentative Ruling:

1/7/2019

See Calendar No. 7, incorporated in full by reference.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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

Tuesday, January 8, 2019

Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#10.00 HearingRE: [45] Motion Trustees Notice Of Motion And Motion For Order Approving Carve-Out Agreement with proof of service (D'Alba, Michael)

Docket 45

Tentative Ruling:

1/7/2019

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

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion for Order Approving Carve-Out Agreement [Doc. No. 45] (the "Motion")
 - a) Notice of Hearing on Motion for Order Approving Carve-Out Agreement Filed by Chapter 7 Trustee [Doc. No. 46]

I. Facts and Summary of Pleadings

Fatemeh Mahdavi (the "Debtor") commenced a voluntary Chapter 7 petition on May 22, 2018. Among the assets of the estate are properties located at 1398 Davies Drive, Beverly Hills, CA (the "Davies Property") and 2160 Century Park East, #812, Los Angeles, CA (the "Condominium"). The Davies Property is encumbered by an Abstract of Judgment in favor of Davoud Gharehbaghi and Iliad Ashraf Por (the "Gharehbaghi Lien") in the amount of \$1,289,722.22. The Chapter 7 Trustee (the "Trustee") moves for approval of a Carve-Out Agreement between the Trustee and Gharehbaghi. The Carve-Out Agreement provides, among other things, that the Trustee will sell the Davies Property and that Gharehbaghi will subordinate his lien to certain administrative expenses involving the Davies Property plus 10% to 15% for the bankruptcy estate, depending on the extent of the proceeds generated. Gharehbaghi's lien as to the Condominium will be avoided and preserved for the benefit of the bankruptcy estate.

The Trustee projects that sale of the Davies Property will generate net equity, subject to the Carve-Out, of \$1,217,044. The Trustee's projections for the equity generated from the sale of the Condominium depend upon the outcome of the adversary proceeding *De Arruda v. Carolyn A. Dye, Chapter 7 Trustee for the*

**United States Bankruptcy Court
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Los Angeles
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Tuesday, January 8, 2019

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10:00 AM

CONT... Fatemeh V. Mahdavi

Chapter 7

Bankruptcy Estate of Fatemeh Mahdavi (Adv. No. 2:18-ap-01266-ER) (the "Adversary Proceeding"). In the Adversary Proceeding, James De Arruda asserts a 50% interest in the Condominium; the Trustee disputes De Arruda's allegations and asserts that the estate holds a 100% interest in the Condominium. The Trustee projects equity for the estate from the sale of the Condominium of \$24,526 if the Trustee prevails, and equity of \$12,273 in the event that De Arruda prevails.

No Opposition to the Motion is on file.

II. Findings and Conclusions

"Despite the general rule prohibiting the sale of fully encumbered property, chapter 7 trustees may seek to justify the sale through a negotiated carve-out agreement with the secured creditor." *In re KVN Corp., Inc.*, 514 B.R. 1, 6 (B.A.P. 9th Cir. 2014). A carve-out agreement is appropriate if (1) the Trustee has fulfilled his or her basic duties, if (2) there is a prospect of a meaningful distribution to unsecured creditors, and if (3) the terms of the carve-out agreement have been fully disclosed. *Id.* at 8.

The Court finds the Carve-Out Agreement proposed here to be appropriate. First, the Trustee has fulfilled her basic duties by examining the liens against the Davies Property and by consulting a real estate broker as to the Property's valuation. Second, under the Carve-Out Agreement, there is a prospect of a meaningful distribution to unsecured creditors. The estate will receive 10% of the first \$1 million in net sales proceeds and 15% of any net proceeds in excess of \$1 million. Finally, the Trustee has fully disclosed the terms of the Carve-Out Agreement.

Based upon the foregoing, the Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

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

CONT... Fatemeh V. Mahdavi

Chapter 7

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
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Tuesday, January 8, 2019

Hearing Room 1568

11:00 AM

2:17-20298 Karla Renee Armstrong Thompson

Chapter 7

#100.00 APPLICANT: Accountant for Trustee - Hahn Fife & Company

Hearing Re [38] and [39] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

1/7/2019

On July 19, 2018, this Court entered an order approving the Trustee's request to employ Applicant as a tax preparer and to pay a \$750.00 flat fee [Doc. No. 36]. Those fees are approved on a final basis.

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

Party Information

Debtor(s):

Karla Renee Armstrong Thompson

Represented By
Julie J Villalobos

Trustee(s):

David M Goodrich (TR)

Represented By
D Edward Hays
Laila Masud

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

Tuesday, January 8, 2019

Hearing Room 1568

11:00 AM

2:17-20298 Karla Renee Armstrong Thompson

Chapter 7

#101.00 APPLICANT: Attorney for Trustee - Marshack Hays LLP

Hearing Re [38] and [39] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

1/7/2019

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

Fees: \$11,490

Expenses: \$113.87

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

Party Information

Debtor(s):

Karla Renee Armstrong Thompson

Represented By
Julie J Villalobos

Trustee(s):

David M Goodrich (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 8, 2019

Hearing Room 1568

11:00 AM

CONT... Karla Renee Armstrong Thompson

Laila Masud

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 8, 2019

Hearing Room 1568

11:00 AM

2:17-20298 Karla Renee Armstrong Thompson

Chapter 7

#102.00 APPLICANT: Trustee - David M Goodrich

Hearing Re [38] and [39] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

1/7/2019

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

Total Fees: \$5,544.07

Total Expenses: \$24.56

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

Party Information

Debtor(s):

Karla Renee Armstrong Thompson

Represented By
Julie J Villalobos

Trustee(s):

David M Goodrich (TR)

Represented By
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 9, 2019

Hearing Room 1568

10:00 AM

2:16-23210 Elmer Omar Chavez

Chapter 7

#1.00 APPLICANT: Trustee: Carolyn A. Dye

Hearing re [29] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

1/8/2019

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

Total Fees: \$1,000

Total Expenses: \$0.00

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

Party Information

Debtor(s):

Elmer Omar Chavez

Represented By
Daniel King

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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

Wednesday, January 9, 2019

Hearing Room 1568

10:00 AM

2:18-23350 Johnnie Lee Perkins Jr

Chapter 7

#2.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against an Individual. Jacqueline Perkins, Darrell Muhammed . (Fierro, Viridiana) Additional attachment(s) added on 11/13/2018 (Fierro, Viridiana).

Docket 1

Tentative Ruling:

1/8/2019

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

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Certificate of Service [Doc. No. 5]

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

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

Based upon the foregoing, the involuntary petition is DISMISSED. The Court will enter an appropriate order.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Johnnie Lee Perkins Jr

Chapter 7

Debtor(s):

Johnnie Lee Perkins Jr

Pro Se

**United States Bankruptcy Court
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Wednesday, January 9, 2019

Hearing Room 1568

10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#3.00 Hearing
RE: [16] Motion for Setting Property Value Re: 10735 Lesterford Ave, Downey,
CA 90241 (Tang, Kevin)

fr. 11-6-18

Docket 16

Tentative Ruling:

1/8/2019

Having reviewed the competing appraisals submitted by the Debtor and Deutsche Bank, the Court finds that for plan treatment purposes, the Property has a value of \$700,000.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 16] (the "Valuation Motion")
 - a) Amended Notice of Hearing [Doc. No. 19]
- 2) Opposition to Motion for Order Determining Value of Collateral [Doc. No. 25]
- 3) Order Setting Continued Hearing on Valuation Motion for January 9, 2019 [Doc. No. 31]
 - a) Ruling Setting Continued Hearing on Valuation Motion for January 9, 2019 [Doc. No. 26]
- 4) Supplemental Opposition to Motion for Order Determining Value of Collateral [Doc. No. 37]
- 5) Debtor's Reply to Secured Lender's Supplemental Opposition to Motion for Order Determining Value of Collateral [Doc. No. 38]

I. Facts and Summary of Pleadings

Maria G. Gallarza-Dominguez (the "Debtor") commenced a voluntary Chapter 11 petition on June 26, 2018. Doc. No. 1. Debtor has an interest in real property located at 10735 Lesterford Ave., Downey, CA 90241-3063 (the "Property"). The Property is encumbered by a First Deed of Trust (the "DOT") in favor of Deutsche Bank National

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Wednesday, January 9, 2019

Hearing Room 1568

10:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

Trust Company, as Trustee for American Home Mortgage Assets Trust 2007-3, Mortgage-Backed Pass-Through Certificates Series 2007-3 (“Deutsche Bank”). Deutsche Bank asserts a secured claim against the Property in the amount of \$1,195,778.35. *See* Proof of Claim 5-1 (“Claim 5”).

The Debtor seeks an order valuing the Property at \$600,000, in order to bifurcate Deutsche Bank’s claim for plan treatment purposes (the “Valuation Motion”). In support of the claimed valuation, the Debtor submits an *Appraisal Report* prepared by Perez & Associates (the “Debtor’s Appraisal”). Attached to the Debtor Appraisal is a *Construction Bid Summary* prepared by EC Precise Designs (the “Construction Summary”). According to the Construction Summary, the Property requires repairs in the amount of \$179,550. The estimated cost of the most significant repairs are as follows:

- 1) In bathroom #1, remove and replace drywall; remove and replace existing tile on shower walls; install new solid maple vanity; install new frameless shower enclosure--\$15,400
- 2) In bathroom #2, remove and replace existing tile on shower; install new toilet and new solid maple vanity; install new frameless shower enclosure--\$16,700
- 3) Replace existing kitchen cabinets with new solid maple cabinets containing self-closing hardware; repair existing tile flooring in kitchen--\$18,100
- 4) Replace roof--\$29,700
- 5) Repair existing stucco--\$21,500
- 6) Rebuild existing patio--\$12,700
- 7) Install new air conditioning unit--\$13,500

An initial hearing on the Valuation Motion was held on November 6, 2018. That hearing was continued to provide Deutsche Bank additional time to further investigate the Property’s value and obtain a full interior appraisal, if necessary. Deutsche Bank has submitted additional evidence, consisting of an appraisal based upon a complete visual inspection of the Property’s interior and exterior, prepared by Certified Residential Real Estate Appraiser Andrew Grunewald (the “Bank’s Appraisal”). The Bank’s Appraisal values the Property at \$700,000.

Like the Debtor’s Appraisal, the Bank’s Appraisal contains a list of recommended repairs to the Property. The repairs recommended by the Bank’s Appraisal have an estimated cost of \$30,500, and consist of the following:

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CONT... Maria G Gallarza-Dominguez

Chapter 11

- 1) Roof repair--\$2,500
- 2) Drywall repair--\$2,000
- 3) Exterior/interior paint--\$20,000
- 4) Discloration in bathroom--\$3,000
- 5) Termite infestation--\$3,000

The \$700,000 valuation contained in the Bank's Appraisal assumes that none of the repairs are made. If the recommended repairs are made, the Bank's Appraisal estimates that the Property would be worth \$730,000.

Debtor contests the validity of the Bank's Appraisal. According to the Debtor, the Bank's Appraisal overstates the Property's value because it does not take into account the necessary repairs.

II. Findings and Conclusions

Section 506(a)(1) provides in relevant part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Debtor asserts that the Property is worth \$600,000; Deutsche Bank maintains that the Property is worth \$700,000. The disagreement can be largely explained by the parties' differing estimates as to the extent of necessary repairs. Debtor asserts that the Property requires \$179,550 in repairs, while Deutsche Bank estimates the required repairs at only \$30,500.

The Bank's Appraisal contains color photographs of the dining room, kitchen, laundry room, family room, master bedroom, master bathroom, two other bedrooms, and one other bathroom. The Bank's Appraisal also includes four color photographs showing various types of damage, including (1) damage to the drywall located next to the garage door entry, (2) termite damage to the Property's exterior, (3) peeling paint on the Property's exterior, and (4) cracks in the rear patio. Based upon its review of

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10:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

these photographs, the Court finds that the Bank's Appraisal's repair estimate of \$30,500 to be far more realistic than the Debtor's inflated repair estimate of \$179,550.

The Property is located in Downey, CA and is 68 years old. Per the Debtor's Appraisal, it is located in a neighborhood contain "structures of average quality," in "average to good condition," exhibiting "average maintenance." The pictures contained in the Bank's Appraisal show that the cabinets and fixtures in the bathrooms and kitchen are in decent condition, yet the Debtor's Construction Summary contemplates the installation of two new solid maple vanities in the bathrooms, two frameless shower enclosures, and high-end self-closing cabinets in the kitchen. In other words, many of the repairs contemplated by the Construction Summary would upgrade the Property's interior to a level far in excess of that demanded by the market. As a result, the Debtor's excessive repair estimate implies that the Property is in worse condition than it actually is.

Further, contrary to the Debtor's contention, Deutsche Bank has not failed to account for necessary repairs in its appraisal. The Bank's Appraisal fully accounts for the fact that the Property requires certain repairs, such as painting, termite remediation, and roof remediation. However, unlike the Debtor's Appraisal, the Bank's Appraisal includes only those repairs that would be essential were the Property to be marketed, and does not inflate the cost of such repairs. For example, the Bank's Appraisal realistically estimates that the Property's roof could be repaired for \$2,500, whereas the Construction Summary attached to the Debtor's Appraisal asserts that the roof must be completely replaced at a cost of \$29,700.

Because the Debtor's Appraisal contains such inflated repair estimates, it undervalues the Property. The Court finds that for plan treatment purposes, the Property has a value of \$700,000, as set forth in the Bank's Appraisal.

The Debtor shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

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

Party Information

**United States Bankruptcy Court
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Wednesday, January 9, 2019

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10:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Kevin Tang

**United States Bankruptcy Court
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Wednesday, January 9, 2019

Hearing Room 1568

11:00 AM

2:17-23517 Ray C Patterson

Chapter 7

#100.00 APPLICANT: Trustee: Wesley H Avery

Hearing re [80] and [81] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

1/8/2019

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

Total Fees: \$3,250

Total Expenses: \$303.10

International Sureties: \$6.52

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

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D. Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Wednesday, January 9, 2019

Hearing Room 1568

11:00 AM

CONT...

Ray C Patterson

Nancy H Zamora

Chapter 7

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11:00 AM

2:17-23517 Ray C Patterson

Chapter 7

#101.00 APPLICANT: Accountant: Menchaca & Company

Hearing re [80] and [81] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

1/8/2019

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

Fees: \$2,202

Expenses: \$31.05

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

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D. Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 9, 2019

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11:00 AM

CONT...

Ray C Patterson

Nancy H Zamora

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 9, 2019

Hearing Room 1568

11:00 AM

2:17-23517 Ray C Patterson

Chapter 7

#102.00 APPLICANT: Bond Payments - International Sureties

Hearing re [80] and [81] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

1/8/2019

See Calendar No. 100, incorporated herein by reference.

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D. Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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Wednesday, January 9, 2019

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11:00 AM

2:17-23517 Ray C Patterson

Chapter 7

#103.00 APPLICANT: Attorney - Law Offices of Zamora and Hoffmeier

Hearing re [80] and [81] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

1/8/2019

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

Fees: \$15,620

Expenses: \$1,081.41

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

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D. Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, January 9, 2019

Hearing Room 1568

11:00 AM

CONT...

Ray C Patterson

Nancy H Zamora

Chapter 7

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

Monday, January 14, 2019

Hearing Room 1568

10:00 AM

2:18-22698 Sienna Robin Sohee Yoon

Chapter 7

#1.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Lexus CT200H .

Docket 11

Tentative Ruling:

1/11/2019

Tentative Ruling:

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

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

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

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

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

**United States Bankruptcy Court
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Monday, January 14, 2019

Hearing Room 1568

10:00 AM

CONT... Sienna Robin Sohee Yoon

Chapter 7

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

Party Information

Debtor(s):

Sienna Robin Sohee Yoon

Represented By
David H Chung

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, January 14, 2019

Hearing Room 1568

10:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#2.00 Hearing
RE: [76] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Tesla Model S 85 VIN: 5YJSA1H49FF084039. (Pleasant, Joseph)

Docket 76

***** VACATED *** REASON: STIPULATION ENTERED 1-8-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang
David Samuel Shevitz

**United States Bankruptcy Court
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Los Angeles
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Monday, January 14, 2019

Hearing Room 1568

10:00 AM

2:18-24291 Apostolic Ark Faith Assembly, Inc.

Chapter 7

#3.00 HearingRE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 536 S 2nd Street, Ste I & J, Covina, CA . (Long, Helen)

Docket 6

Tentative Ruling:

1/11/2019

Tentative Ruling:

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

The automatic stay does not apply to any action taken by Movant to evict the Debtor from the Property. Movant obtained an unlawful detainer judgment against the Debtor on November 5, 2018, and obtained a writ of possession for the Property on November 13, 2018. Debtor filed a voluntary Chapter 7 petition on December 7, 2018. "[U]nder California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." In re Perl, 811 F.3d 1120, 1127–28 (9th Cir. 2016). Because the Debtor's interest in the Property was extinguished pre-petition, the Property is not property of the estate and the automatic stay does not apply. The unlawful detainer judgment divested the Debtor "of all legal and equitable possessory rights that would otherwise be protected by the automatic stay." Id. at 1130.

Movant may enforce its remedies to obtain possession of the property in accordance with applicable state law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

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10:00 AM

CONT... Apostolic Ark Faith Assembly, Inc.

Chapter 7

The 14-day stay prescribed by FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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

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

Party Information

Debtor(s):

Apostolic Ark Faith Assembly, Inc.

Represented By
R Grace Rodriguez

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01065 Goodrich v. Have Fashion, Inc., a California corporation

- #1.00** Status Conference RE: [1] Adversary case 2:17-ap-01065 **to monitor the status of the consummation of the Settlement Agreement** Complaint by David M. Goodrich against Have Fashion, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17; 12-12-17; 6-5-18

Docket 1

Tentative Ruling:

1/14/2019

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments totaling \$18,000 over a period of approximately one year, with the final payment to be made on December 15, 2018.

A final payment of \$3,000 remains outstanding. The Chapter 7 Trustee (the "Trustee") expects that the final payment will be forthcoming.

Pursuant to Trustee's request, a continued Status Conference to monitor consummation of the Settlement Agreement shall take place on **March 12, 2019, at 10:00 a.m.** The Trustee shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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

**United States Bankruptcy Court
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10:00 AM

CONT... Shasa USA LLC

Chapter 7

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Have Fashion, Inc., a California

Represented By
Michael H Yi

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

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

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 8-15-17; 10-17-17; 7-17-18

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 10-23-18**

Tentative Ruling:

7/16/2018

On June 25, 2018, Plaintiff submitted a *Request for Entry of Default*. The Court declined to enter Defendant's default, because the *Request for Entry of Default* did not contain sufficient information to allow the Court to determine whether Defendant had been properly served. Plaintiff has subsequently submitted all the required information—including a copy of the Complaint, as translated into Chinese, that was served upon the Defendant, and the documents showing compliance with the international treaty governing service upon a foreign corporation.

Plaintiff states that it intends to proceed with obtaining a default, but states that it may take an additional six months for Plaintiff to insure that Defendant has been properly served. Plaintiff requests that a continued Status Conference be conducted in six months.

Pursuant to Plaintiff's request, a continued Status Conference shall take place on **January 15, 2019, at 10:00 a.m.** Plaintiff shall file a Status Report by no later than fourteen days prior to the hearing. The Court will enter an order setting the continued Status Conference.

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

**United States Bankruptcy Court
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CONT... Shasa USA LLC

Chapter 7

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

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01117 Goodrich v. Must Have Inc., a California corporation, d/b/a Da

#3.00 Status Conference

RE: [1] Adversary case 2:17-ap-01117. Complaint by David M. Goodrich against Must Have Inc., a California corporation, d/b/a Danbee. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr: 9-25-17; 1-29-18; 6-5-18

Docket 1

Tentative Ruling:

1/14/2019

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments totaling \$12,000 over a period of approximately one year, with the final payment to be made on December 15, 2018.

A final payment of \$2,000 remains outstanding. The Chapter 7 Trustee (the "Trustee") expects that the final payment will be forthcoming.

Pursuant to Trustee's request, a continued Status Conference to monitor consummation of the Settlement Agreement shall take place on **March 12, 2019, at 10:00 a.m.** The Trustee shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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

United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Must Have Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

Adv#: 2:18-01324 Gonzalez v. Marquez et al

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01324. Complaint by Rosendo Gonzalez against Victor Marquez, David Marquez. (Charge To Estate). Summons and Notice of Status Conference in Adversary Proceeding and Adversary Proceeding Cover Sheet (Attachments: # 1 Part 2) Nature of Suit: (14 (Recovery of money/property - other)) (Chung, Toan)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Defendant(s):

Victor Marquez

Pro Se

David Marquez

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Toan B Chung

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17; 6-6-18; 9-11-18

Docket 1

Tentative Ruling:

1/14/2019

In this dischargeability action, Plaintiffs allege that Defendant committed willful and malicious injury by secretly videotaping Plaintiffs changing and using the restroom. The Court has stayed this action pending resolution of the underlying state court action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable (the "State Court Action").

Based upon its review of the most recent Status Report and the *Declaration of Eric V. Traut Showing Actions Undertaken to Prosecute the State Court Action*, the Court notes that the proceedings in the State Court Action are at an early stage.

A continued Status Conference shall be held on **June 11, 2019, at 10:00 a.m.** The parties shall submit a Joint Status Report by no later than fourteen days prior to the hearing. The Joint Status Report shall describe in detail the status of the State Court Action.

The Court will prepare and enter an order setting the continued Status Conference.

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

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10:00 AM

CONT... Kevin Thomas Roy

Chapter 7

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#6.00 Status Hearing

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

Docket 1

***** VACATED *** REASON: CONTINUED 3/12/19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

The Home Depot, Inc.

Pro Se

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CONT... Lempa Roofing Inc Chapter 7

Home Depot Credit Services Pro Se

Home Depot U.S.A., Inc. Pro Se

Plaintiff(s):

Rosendo Gonzalez Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR) Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#7.00 Status Hearing RE: [1] Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Singh, Sonia)

Docket 1

Tentative Ruling:

1/14/2019

The Chapter 7 Trustee (the "Trustee") shall appear to respond to the Court's concerns, set forth below.

The Trustee has collected and is holding receivables in the amount of \$23,117.15 in a segregated account (the "Segregated Funds"). The Segregated Funds are encumbered by security interests asserted by Defendants FinishLine Capital, Inc., ML Factors Funding, LLC, Last Chance Funding, Inc., TVT Capital, LLC, Complete Business Solutions Group, Inc., Karish Kapital LLC, and Yellowstone Capital West, LLC. The Trustee is unable to determine which Defendant is entitled to the Segregated Funds. The Trustee is willing to deliver the Segregated Funds to whichever Defendant is entitled to receive them.

Pursuant to Cal. Code Civ. Proc. § 386, the Trustee seeks the following relief:

- 1) An order directing the Clerk of the Court to hold the Segregated Funds pending determination of the rights of the Defendants;
- 2) An order requiring Defendants to litigate their respective rights and claims in and to the Segregated Funds;
- 3) An order discharging the Trustee from any and all liability on account of the claims of each of the Defendants in and to the Segregated Funds; and
- 4) An award of costs and reasonable attorneys' fees, to be determined by the Court and paid out of the Segregated Funds.

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10:00 AM

CONT... Golden Diamond International Inc.

Chapter 7

Each Defendant was required to respond to the Complaint by no later than October 17, 2018. None of the Defendants have responded to the Complaint. In his *Unilateral Status Report*, the Trustee states that he intends to file a motion to deposit the Segregated Funds to the Court's registry.

Cal. Code Civ. Proc. § 386 provides:

Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.

In *Dial 800 v. Fesbinder*, 118 Cal. App. 4th 32, 42–43, 12 Cal. Rptr. 3d 711, 718 (2004), *as modified* (May 5, 2004), the California Court of Appeal explained the purpose and structure of interpleader actions brought under Cal. Code Civ. Proc. § 386:

In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds. Upon an admission of liability and deposit of monies with the court, the plaintiff then may be discharged from liability and dismissed from the interpleader action. The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court's custody until the rights of the potential claimants of the monies can be adjudicated. Thus, the interpleader proceeding is traditionally viewed as two lawsuits in one. The first dispute is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds.

Dial 800, 118 Cal. App. 4th at 42–43 (internal citations omitted).

To satisfy his right to interplead the funds, the Trustee must "show that the defendants make conflicting claims" to the funds, and that the Trustee "cannot safely determine which claim is valid" *Placer Foreclosure, Inc. v. Aflalo*, 23 Cal. App. 5th 1109, 1113, 233 Cal. Rptr. 3d 694, 697 (Ct. App. 2018).

The Trustee shall appear at the hearing to address the following issues. First, the

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10:00 AM

CONT... Golden Diamond International Inc.

Chapter 7

Court requires a further explanation regarding why the Trustee "cannot safely determine" which of the claims asserted by the Defendants is valid. *Placer Foreclosure*, 23 Cal. App. 5th at 1113. The Complaint alleges that each Defendant has recorded UCC financing statements against the Debtor's assets with the California Secretary of State. It is unclear to the Court why the Trustee cannot determine which Defendant is entitled to the funds by examining the priority of the security interests asserted by the Defendants.

Second, the Court requires further information regarding the Trustee's plans to resolve this action given the failure of any of the Defendants to respond to the Complaint. Seven entities have asserted security interests against the Segregated Funds, which amount to only \$23,117.15. In the event the Court determines that the Trustee is entitled to be paid reasonable attorneys' fees from the Segregated Funds, the amount available to the Defendants will be even less. Given the small amount at issue, it would not be surprising if one or more of the Defendants continued to decline to respond to the litigation. If the Defendants refuse to participate in the litigation, how can the Court determine which Defendant is entitled to the funds?

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
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Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se
Yellowstone Capital West	Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee	Represented By
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CONT... Golden Diamond International Inc.

Chapter 7

Sonia Singh

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#8.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

fr. 9-11-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

The Court has modified the *Joint Proposed Pre-trial Stipulation and Order* (the "Pretrial Order") submitted by the parties. Certain information contained in the Pretrial Order—such as the history of the underlying State Court Action—is not relevant to this proceeding.

Based upon its review of the Pretrial Order, the Court finds that one day is sufficient to try the matters at issue in this action. Trial shall take place on **Monday, January 28, 2019**, commencing at 9:00 a.m. The parties shall deliver the materials set forth in the *Order Re: Courtroom Procedures* [Doc. No. 4] to Judge Robles' chambers by no later than **Friday, January 18, 2019**.

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

Party Information

**United States Bankruptcy Court
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CONT... Paul William Martin

Chapter 7

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#9.00 Status Hearing
RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission
4) Quiet Title by Peter W Lianides on behalf of James De Arruda against
Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi

Docket 14

Tentative Ruling:

1/14/2019

On January 5, 2018, Plaintiff filed an action in the Los Angeles Superior Court (the "State Court") seeking a judgment confirming Plaintiff's title to and interest in property located at 2160 Century Park East, #812, Los Angeles, CA 90067 (the "Condo"). On May 22, 2018, Debtor/Defendant Fatemeh V. Mahdavi, who asserts an interest in the Condo, filed a voluntary Chapter 7 petition. The State Court Action also named as defendants the Debtor's spouse, Ali Rez Mahdavi, and Daria Asya Selivanova.

On August 20, 2018, Plaintiff removed the State Court Action to the Bankruptcy Court. Plaintiff asserted that removal was appropriate because the action seeks a determination as to whether the Condo is property of the estate. On October 4, 2018, Plaintiff dismissed its claims against Selivanova. Adv. Doc. No. 12.

The Court conducted an initial Status Conference on October 16, 2018, at which it ordered Plaintiff to file an Amended Complaint naming the Chapter 7 Trustee (the "Trustee") as a defendant. Adv. Doc. No. 16. The Court further authorized the Trustee to file an Answer and Counterclaim to the Amended Complaint. *Id.*

Plaintiff filed an Amended Complaint as ordered by the Court on October 30, 2018. Adv. Doc. No. 14. In the Amended Complaint, Plaintiff seeks a declaration that he holds a 50% interest in the Condo. The Trustee filed an Answer and Counterclaim on December 20, 2018. Adv. Doc. No. 26. The Trustee disputes Plaintiff's claim to a 50% interest in the Condo, and seeks a declaration that the Condo is property of the estate in its entirety.

Dr. Davoud Gharehbaghi and Iliad Ashraf Por (collectively, "Gharehbaghi") recorded an Abstract of Judgment (the "Gharehbaghi Abstract of Judgment") against

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10:00 AM

CONT...

Fatemeh V. Mahdavi

Chapter 7

the Condo on November 2, 2017. On January 9, 2019, the Court granted the Trustee's motion to approve a *Stipulation for: (1) Carve-out of Judgment Lien on 1398 Davies Drive, Beverly Hills, CA; and (2) Avoidance and Preservation of Judgment Lien on 2160 Century Park East #812, Los Angeles, California* [Bankr. Doc. No. 45, Ex. 6] (the "Carve-Out Agreement"). The Carve-Out Agreement provides that the Gharehbaghi Abstract of Judgment against the Condo shall be deemed avoided and preserved for the benefit of the bankruptcy estate. Carve-Out Agreement at ¶I.

Having reviewed the Joint Status Report filed by the parties, the Court HEREBY ORDERS as follows:

- 1) In the interests of judicial efficiency, the Amended Complaint and the Counterclaim shall be tried concurrently. The litigation deadlines previously ordered with respect to the Counterclaim shall govern the litigation of both the Amended Complaint and Counterclaim, as follows:
 - a) A continued Status Conference shall be held on **4/16/2019 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - b) The last day to amend pleadings and/or join other parties is **5/16/2019**.
 - c) The last day to disclose expert witnesses and expert witness reports is **8/27/2019**.
 - d) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/26/2019**.
 - e) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - f) The last day for dispositive motions to be heard is **10/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - g) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/26/2019**. (If the non-expert discovery

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CONT...

Fatemeh V. Mahdavi

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- h) A Pretrial Conference is set for **11/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- i) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).

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Fatemeh V. Mahdavi

Chapter 7

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

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

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CONT... Fatemeh V. Mahdavi

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

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10:00 AM

2:18-18233 Jessie O Unite

Chapter 7

Adv#: 2:18-01325 South Bay Credit Union v. Unite

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01325. Complaint by South Bay Credit Union against Jessie Orden Unite. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Simon, A. Lysa)

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie O Unite

Represented By
Edwin A Barnum

Defendant(s):

Jessie Orden Unite

Pro Se

Plaintiff(s):

South Bay Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Wesley H Avery (TR)

Represented By
Edwin A Barnum

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Hearing Room 1568

10:00 AM

2:18-19418 Eva Diaz

Chapter 7

Adv#: 2:18-01308 Lendmark Financial Services, LLC v. Diaz

#11.00 Status Hearing RE: [1] Adversary case 2:18-ap-01308. Complaint by The Dunning Law Firm Lendmark Financial Services, LLC against Eva Luz Diaz. false pretenses, false representation, actual fraud)) (Dunning, Donald)

Docket 1

Tentative Ruling:

1/14/2019

Lendmark Financial Services, LLC ("Plaintiff") commenced this dischargeability action against Eva Luz Diaz ("Defendant") on October 1, 2018. The Clerk of the Court entered Defendant's default on November 28, 2018. Doc. No. 12. Plaintiff has set a Motion for Default Judgment (the "Motion") for hearing on February 6, 2019.

The Court will hear the Motion on February 6, 2019, which may resolve this action. The litigation deadlines previously set by the Court are VACATED.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Eva Diaz

Pro Se

Defendant(s):

Eva Luz Diaz

Pro Se

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CONT... Eva Diaz

Chapter 7

Plaintiff(s):

The Dunning Law Firm Lendmark

Represented By
Donald T Dunning

Trustee(s):

Wesley H Avery (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:10-12927 FirstFed Financial Corp.

Chapter 11

#12.00 Hearing: [284] and [375] Post-confirmation Status Conference re chapter 11 plan

fr. 4-26-12; 5-23-12; 6-6-12; 7-3-12; 7-3-12; 10-2-12; 3-20-13; 10-9-13; 4-16-14;
4-7-15; 12-16-15; 1-20-16; 1-17-17; 9-12-17; 3-14-18; 5-9-18; 9-12-18

Docket 284

***** VACATED *** REASON: PER ORDER ENTERED 1-4-19**

Tentative Ruling:

9/11/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to January 15, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

FirstFed Financial Corp.

Represented By
Jon L Dalberg
Rodger M Landau
Joel S. Miliband
Cathrine M Castaldi
Rodger M Landau

Movant(s):

Holdco Advisors, L.P.

Represented By
Jeff D Kahane
Jeff D Kahane

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10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

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

#13.00 Status Conference

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

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18; 9-11-18; 12-11-18

Docket 1

Tentative Ruling:

1/14/2019

The Court has previously found that resolution of the Chapter 11 case of Crystal Waterfalls, LLC ("Crystal") may resolve this action. *See* Order Continuing Pretrial Conference Pending Confirmation of Crystal Waterfalls, LLC's Chapter 11 Plan [Doc. No. 26]. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") in Crystal's bankruptcy case. The Approval Order provides that the structured dismissal of Crystal's Chapter 11 case will occur through a two-step process. First, Crystal is required to make payments to various creditors, obtain orders disallowing certain claims, and satisfy various other conditions. Upon satisfaction of the conditions, Crystal's case will be dismissed.

At a Status Conference conducted on September 11, 2018, the Court noted that Crystal had not yet completed all the actions contemplated by the Approval Order. In its order setting a continued Status Conference for December 11, 2018, the Court stated:

Because the ninety-day continuance of the Status Conference provides Crystal more than sufficient time to complete the remaining actions contemplated by the Approval Order, the Court expects that all such remaining actions will

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CONT...

Crystal Waterfalls LLC

Chapter 11

have been completed by the date of the continued Status Conference.

See Order Setting Continued Status Conference for December 11, 2018, at 10:00 a.m. [Doc. No. 40] at ¶3.

At the December 11 Status Conference, the Court was advised that Crystal had completed most of the actions contemplated by the Approval Order. The most significant action Crystal had not yet completed was the filing of a 2017 tax return. Crystal represented that the tax return was "being prepared for filing by Grobsteem Teeple, who expects it to be filed within the next 7–10 business days. A copy will be provided to counsel for the Plan Administrator as soon as it is filed." Doc. No. 42 at ¶E.1.b. Based upon Crystal's representation, the Court set this continued Status Conference.

The Plan Administrator and Crystal agree that dismissal of this action is appropriate once Crystal's tax return has been filed. Defendants Golden Bay LLC and Lucy Gao did not participate in preparation of the Status Report.

Crystal is **ORDERED** to file the 2017 tax return by no later than **January 29, 2019**. The Court will not extend this deadline absent exceptionally compelling circumstances. Crystal has been provided more than sufficient time to complete the tasks set forth in the Approval Order, including the filing of the tax return.

Once the Plan Administrator has verified that the tax return has been filed in a form acceptable to the Plan Administrator, the Court will dismiss this action. Any objection to dismissal by Defendants Golden Bay LLC and/or Lucy Gao shall be filed by no later than **January 29, 2019**. *See* Civil Rule 41(a)(2) (providing that where a defendant has responded to the complaint, an "action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper"). In the event that Golden Bay LLC and/or Ms. Gao object to dismissal, the Court will determine whether a hearing on such objection is required, and will notify the parties accordingly.

A continued Status Conference shall be held on **February 20, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

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CONT... Crystal Waterfalls LLC

Chapter 11

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

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#14.00 Status Hearing
RE: [1] Postconfirmation Status Conference

fr. 10-17-18

Docket 1

Tentative Ruling:

1/14/2019

On June 18, 2018, the Court entered an order confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Plan"). The Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of the estate. (The Plan provided that all assets of the estate remained vested in the estate. *See* Plan at Art. 3.)

The Plan Administrator has made two distributions to holders of allowed secured claims, in the approximate aggregate amount of \$4.4 million. A third distribution to claimants will be made on or before February 28, 2019. The Plan Administrator has continued to pursue collection of the estate's most significant remaining asset, a judgment in the amount of approximately \$74 million against Lucy Gao and Benjamin Kirk.

Having reviewed the *Second Post-Confirmation Status Report*, the Court finds that the Plan Administrator is making sufficient progress toward effectuating the Plan. A continued Status Conference shall take place on **June 11, 2019, at 10:00 a.m.** The Plan Administrator shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Liberty Asset Management Corporation

Chapter 11

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

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

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Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#15.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18; 11-13-18

Docket 0

***** VACATED *** REASON: CONTINUED 2-5-19 AT 10:00 A.M.**

Tentative Ruling:

11/9/2018

The Court has entered an order continuing this Status Conference to **January 15, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Liberty Asset Management

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

Defendant(s):

HANDING HOLDING

Pro Se

TLH REO MANAGEMENT LLC

Pro Se

BRADBURY FURLONG LLC

Pro Se

OAK RIVER ASSET

Pro Se

LIBERTY ASSET MANAGEMENT

Represented By
Jeffrey S Kwong
David B Golubchik

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CONT... Liberty Asset Management Corporation

Chapter 11

John-Patrick M Fritz
Eve H Karasik

PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

RICHBEST HOLDING LLC	Pro Se
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
YCJS 2012 LLC	Represented By David S Henshaw
AHA 2012 LLC	Represented By David S Henshaw

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10:00 AM

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

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#16.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

Having reviewed the Unilateral Status Reports submitted by the Plaintiff and Defendant, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
- 2) By no later than **March 12, 2019**, the parties shall have completed one day of mediation.
- 3) To provide the parties sufficient time to attend mediation, the litigation deadlines previously ordered are continued as follows:
 - a) A continued Status Conference shall be held on **4/16/2019 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - b) The last day to amend pleadings and/or join other parties is **5/16/2019**.
 - c) The last day to disclose expert witnesses and expert witness reports is

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**Gardens Regional Hospital and Medical Center, Inc.
8/27/2019.**

Chapter 11

- d) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/26/2019**.
- e) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- f) The last day for dispositive motions to be heard is **10/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- g) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- h) A Pretrial Conference is set for **11/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- i) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party

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Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(3)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(3)(h)(ii).

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

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

Chapter 11

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#17.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

An order approving a stipulation setting aside Defendant's default was entered on December 3, 2018. Doc. No. 28. That order required Defendant to respond to the Complaint by no later than December 17, 2018. Notwithstanding the order, Defendant has not responded to the Complaint. The Joint Status Report states that the parties hope to reach a settlement shortly.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the actions is moving towards settlement, the Court will not order the parties to attend formal mediation at this time.
- 2) The following litigation deadlines shall apply:
 - a) Defendant shall respond to the Complaint by no later than **January 29, 2019**.
 - b) A continued Status Conference shall be held on **4/16/2019 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - c) The last day to amend pleadings and/or join other parties is **5/16/2019**.
 - d) The last day to disclose expert witnesses and expert witness reports is **8/27/2019**.
 - e) The last day to disclose rebuttal expert witnesses and rebuttal expert

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witness reports is **9/26/2019**.

- f) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - g) The last day for dispositive motions to be heard is **10/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - h) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - i) A Pretrial Conference is set for **11/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 3) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be

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inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1.

The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(3)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(3)(ii).

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01173 Official Committee of Unsecured Creditors of Garde v. BETA Healthcare

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01173. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against BETA Healthcare Group. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: DISMISSED 12-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

BETA Healthcare Group

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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10:00 AM

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

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#21.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

Defendant's default was entered on November 2, 2018. Doc. No. 31. The Court ordered the Plaintiff to file a Motion for Default Judgment by no later than December 14, 2018. Plaintiff filed the Motion for Default Judgment as ordered by the Court. Doc. No. 37. On January 11, 2019, Defendant filed an Answer. Doc. No. 40.

Entry of a defendant's default cuts off the defendant's right to appear in the action or present evidence. *Horton v. Sierra Conservation Ctr.*, No. 1:09-CV-01441-AWI-SMS, 2010 WL 743849, at *1 (E.D. Cal. Mar. 1, 2010) *report and recommendation adopted*, No. 1:09-CV-01441AWISMS, 2010 WL 1267743 (E.D. Cal. Mar. 31, 2010); *Great Am. Ins. Co. v. M.J. Menefee Const., Inc.*, No. F06-0392 AWIDL, 2006 WL 2522408, at *2 (E.D. Cal. Aug. 29, 2006); *see also* Hon. A. Wallace Tashima and James M. Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial at 6:43 (if Defendant files an answer after default, the court should not accept the answer for filing; if the clerk accepts the answer, the court will order it stricken). The only procedure available to a defaulted defendant is to (1) stipulate with the Plaintiff to set aside the default or (2) file a motion to set aside the default under Civil Rule 55(c).

The Court will provide Defendant an opportunity to set aside its default before ruling upon the Plaintiff's Motion for Default Judgment. In the event that the Plaintiff

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and Defendant cannot reach a stipulation to set aside Defendant's default, Defendant shall file a motion to set aside its default by no later than **January 29, 2019**. Although the Court cannot rule upon a motion that is not before it, the Court notes that where, as here, a motion to set aside the default is filed shortly after the default has been entered, the default is typically set aside. To defeat a motion to set aside such a default, the Plaintiff is required to show prejudice, and merely being required to litigate the merits of a claim does not qualify as prejudice. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001).

A continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#22.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

The Court ordered the Plaintiff to file a *Motion for Default Judgment* (the "Motion") by no later than December 14, 2018. Doc. No. 33. The Plaintiff filed the Motion as ordered by the Court. Doc. No. 35. The Motion was filed on a negative-notice basis pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o). The deadline to object to the Motion has expired and no objections have been filed. Accordingly, the Court finds it appropriate to rule upon the Motion in connection with this Status Conference.

The Complaint was served upon the Defendant at the following address:

Baxter Healthcare Corporation
c/o CT Corporation System
Agent for Service of Process
One Baxter Parkway
Deerfield, IL 60015

According to documents on file with the Illinois Secretary of State, the address for Defendant's Agent for Service of Process is:

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CT Corporation System
208 So. LaSalle St., Ste. 814
Chicago, IL 60015

Chapter 11

The address at which the Plaintiff served the Complaint is not the address for Defendant's Agent for Service of Process; it is the address of the company's corporate headquarters. Pursuant to Bankruptcy Rule 7004, a domestic corporation may be served by mailing a copy of the Summons and Complaint to the attention of an officer or a managing or general agent. Although the Summons and Complaint were sent to the address at which the Defendant's president conducts business, the mailing was not addressed to the attention of the president or any other corporate officer. The mailing instead was to the attention of CT Corporation System, the Defendant's Agent for Service of Process, which conducts business at a different address.

The Plaintiff is not required to re-serve the Summons and Complaint. However, to ensure that Defendant has received proper notice, the Plaintiff shall re-serve the Motion upon the following addresses:

Baxter Healthcare Corporation
Attn: Brik V. Eyre, President
1 Baxter Pkwy
Deerfield, IL 60015

Baxter Healthcare Corporation
c/o CT Corporation System
CT Corporation System
208 So. LaSalle St., Ste. 814
Chicago, IL 60015

The Motion shall be re-served by no later than **January 22, 2019**. A continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Courtroom 1568 Calendar**

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#23.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

The Court ordered the Plaintiff to file a *Motion for Default Judgment* (the "Motion") by no later than December 14, 2018. Doc. No. 35. The Plaintiff filed the Motion as ordered by the Court. Doc. No. 37. The Motion was filed on a negative-notice basis pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o). The deadline to object to the Motion has expired and no objections have been filed. Accordingly, the Court finds it appropriate to rule upon the Motion in connection with this Status Conference.

The Summons and the Complaint and the Motion were not properly served. The Complaint names "UC Irvine Medical Center" as the defendant. UC Irvine Medical Center is part of the University of California. The University of California is a corporation established by the California Constitution (Article IX, Sec. 9), and is formally designated as "The Regents of the University of California." All legal obligations with the University of California are conducted through "The Regents of the University of California."

The Summons, Complaint, and Motion were served upon the address at which UC Irvine Medical Center conducts business. They were not served upon The Regents of the University of California.

The Plaintiff is not required to re-serve the Summons and Complaint. However, to

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ensure that Defendant has received proper notice, the Plaintiff shall re-serve the Motion upon the following the address set forth in the Proof of Claim 61-1, which was filed on behalf of UC Irvine Health:

Rhonda Stewart Goldstein
Senior Counsel
The Regents of the University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Pursuant to Bankruptcy Rule 7004(b)(6), a state or municipal corporation, such as the The Regents of the University of California, may be served "by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof."

To the extent that compliance with Bankruptcy Rule 7004(b)(6) requires service upon a different address than that set forth in Proof of Claim 61-1, Plaintiff shall also effect service upon that address.

The Motion shall be re-served by no later than **January 22, 2019**. A continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By

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CONT... Gardens Regional Hospital and Medical Center, Inc.
Samuel R Maizel
John A Moe

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Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

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

Chapter 11

Adv#: 2:18-01180 Official Committee of Unsecured Creditors of Garde v. L.A. Good Samaritan

#24.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01180. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against L.A. Good Samaritan Pathology Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

The Court ordered the Plaintiff to file a *Motion for Default Judgment* (the "Motion") by no later than December 14, 2018. Doc. No. 26. The Plaintiff filed the Motion as ordered by the Court. Doc. No. 29. The Motion was filed on a negative-notice basis pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o). The deadline to object to the Motion has expired and no objections have been filed. Accordingly, the Court finds it appropriate to rule upon the Motion in connection with this Status Conference.

The Summons and Complaint and the Motion were properly served upon the Defendant at the address set forth in filings with the California Secretary of State. By this action, the Plaintiff seeks to avoid transfers made to the Defendant during the 90-day period prior to the date of the filing of the petition (the "Petition Date"). Defendant has not responded to the Complaint or to the Motion.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992).

Section 547(b) permits the Trustee to avoid "any transfer of an interest of the debtor in property" if the transfer was:

- 1) to or for the benefit of a creditor;

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- 2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- 3) made while the debtor was insolvent;
- 4) made—
 - a) on or within 90 days before the date of the filing of the petition; or
 - b) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- 5) that enables such creditor to receive more than such creditor would receive if—
 - a) the case were a case under chapter 7 of this title;
 - b) the transfer had not been made; and
 - c) such creditor received payment of such debt to the extent provided by the provisions of this title.

For purposes of §547(b), a "transfer" means:

- a) the creation of a lien;
- b) the retention of title as a security interest;
- c) the foreclosure of a debtor's equity of redemption; or
- d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - i) property; or
 - ii) an interest in property.

§101(54).

It is the Plaintiff's burden to establish all the elements of §547(b) by a preponderance of the evidence. §547(g); *Hall-Mark Electronics Corp. v. Sims (In re Lee)*, 179 B.R. 149, 155 (B.A.P. 9th Cir. 1995) *aff'd*, 108 F.3d 239 (9th Cir. 1997). Section 547(c) sets forth certain defenses to transfer liability. The Defendant has the burden of establishing that the §547(c) defenses apply, again under the preponderance of the evidence standard. §547(g).

The Plaintiff has alleged facts sufficient to establish that the Defendant received transfers avoidable under §547(b). The declaration attached to the Motion support the Plaintiff's entitlement to the damages requested against the Defendant.

The Court will enter default judgment, as requested by the Plaintiff, against the Defendant. The Plaintiff shall submit a conforming judgment within seven days of the hearing.

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

L.A. Good Samaritan Pathology

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

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

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#25.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days by the hearing.

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Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01182 Official Committee of Unsecured Creditors of Garde v. Cardioimage

#26.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01182. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Cardioimage Dynamics, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

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Tentative Ruling:

1/14/2019

On December 14, 2018, Plaintiff filed a *Motion for Default Judgment* (the "Motion"). Doc. No. 35. The Motion was filed on a negative-notice basis pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o). The deadline to object to the Motion has expired and no objections have been filed. Accordingly, the Court finds it appropriate to rule upon the Motion in connection with this Status Conference.

The Summons and Complaint and the Motion were properly served upon the Defendant at the address set forth in filings with the California Secretary of State. By this action, the Plaintiff seeks to avoid transfers made to the Defendant during the 90-day period prior to the date of the filing of the petition (the "Petition Date"). Defendant has not responded to the Complaint or to the Motion.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992).

Section 547(b) permits the Trustee to avoid "any transfer of an interest of the debtor in property" if the transfer was:

- 1) to or for the benefit of a creditor;
- 2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

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- 3) made while the debtor was insolvent;
- 4) made—
 - a) on or within 90 days before the date of the filing of the petition; or
 - b) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- 5) that enables such creditor to receive more than such creditor would receive if—
 - a) the case were a case under chapter 7 of this title;
 - b) the transfer had not been made; and
 - c) such creditor received payment of such debt to the extent provided by the provisions of this title.

For purposes of §547(b), a "transfer" means:

- a) the creation of a lien;
- b) the retention of title as a security interest;
- c) the foreclosure of a debtor's equity of redemption; or
- d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - i) property; or
 - ii) an interest in property.

§101(54).

It is the Plaintiff's burden to establish all the elements of §547(b) by a preponderance of the evidence. §547(g); *Hall-Mark Electronics Corp. v. Sims (In re Lee)*, 179 B.R. 149, 155 (B.A.P. 9th Cir. 1995) *aff'd*, 108 F.3d 239 (9th Cir. 1997). Section 547(c) sets forth certain defenses to transfer liability. The Defendant has the burden of establishing that the §547(c) defenses apply, again under the preponderance of the evidence standard. §547(g).

The Plaintiff has alleged facts sufficient to establish that each Defendant received transfers avoidable under §547(b). The declaration attached to the Motion support the Plaintiff's entitlement to the damages requested against the Defendant.

The Court will enter default judgment, as requested by the Plaintiff, against the Defendant. The Plaintiff shall submit a conforming judgment within seven days of the hearing.

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

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Cardioimage Dynamics, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#27.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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10:00 AM

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

Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#28.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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10:00 AM

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

Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#29.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#30.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

Counsel for the Committee states that it expects to be able to report to the Court at the Status Conference whether a settlement has been reached. The parties shall appear to provide an update to the Court regarding settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#31.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint

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Status Report shall be filed by no later than fourteen days by the hearing.

- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#32.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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10:00 AM

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

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#33.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

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

Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#34.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

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Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint

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Gardens Regional Hospital and Medical Center, Inc.

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Status Report shall be filed by no later than fourteen days by the hearing.

- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#35.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Status Report shall be filed by no later than fourteen days by the hearing.

- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#36.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days by the hearing.

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Gardens Regional Hospital and Medical Center, Inc.

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- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

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

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. United States

#37.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordan Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

United States Department of Health

Represented By
Elan S Levey

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch
Beth Gaschen

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10:00 AM

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

Chapter 11

Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#38.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

This action has settled. The Court has entered an order setting a continued Status Conference for **April 9, 2019, at 10:00 a.m.**, and fixing **February 15, 2019** as the deadline for the Plaintiff to file a motion seeking approval of the settlement.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#39.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

Tentative Ruling:

1/14/2019

On November 9, 2018, the Court entered an order providing in relevant part:

The Court will maintain the litigation deadlines previously set in order to encourage settlement; provided, however, that Defendant's deadline to respond to the Complaint shall be in accordance with the informal extension of time granted by the Plaintiff. In the event the action has not settled by the time of the continued Status Conference, the Court will determine whether it is necessary to extend the litigation deadlines.

Defendant has not responded to the Complaint as a result of the extension of time to respond granted by the Plaintiff. The parties represent that they are moving towards settlement.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) In view of the representation that the action is moving towards settlement, the Court will not at this time order the parties to attend formal mediation.
- 2) The litigation deadlines previously set by the Court are VACATED.
- 3) To provide the parties an opportunity to reach a settlement, a continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days by the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 15, 2019

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10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- 4) If the action that has not settled by the date of the continued Status Conference, the Court will set a date certain by which the Defendant must respond to the Complaint, and will set litigation deadlines, including pretrial conference and trial dates.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#39.10 Status Hearing

RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

11/9/2018

Appearances required. In the Amended Joint Status Report [Doc. No. 27] (the "Status Report"), Defendant states that it "has sent Plaintiff considerable information on its defenses and Plaintiff has not responded with any counter information or a good-faith counter proposal." Status Report at ¶5. Defendant states that it will file a motion for summary judgment asserting defenses under §547.

The Court understands that Plaintiff is prosecuting approximately thirty preference actions; nonetheless, Plaintiff's failure to meaningfully engage with the Defendant regarding a potential settlement is of concern. A negotiated resolution of this action will reduce costs and is in the best interests of all parties.

On September 13, 2018, the Court entered an order assigning this matter to formal mediation. Doc. No. 22. The parties should be prepared to discuss the status of mediation—has a mediation date been schedule? Have the parties made contact with the mediator?

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#40.00 Post confirmation status conference. [171]

fr: 9-18-18

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 1-9-19**

Tentative Ruling:

9/17/2018

For the reasons set forth below, a continued Post-Confirmation Status Conference shall take place on **January 15, 2019, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Reorganized Debtor's Chapter 11 Post-Confirmation Status Report [Doc. No. 179]

I. Facts and Summary of Pleadings

On May 29, 2018, the Court entered an *Order Confirming Debtor's Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 169] (the "Confirmation Order"). This is a Post-Confirmation Status Conference. Debtor states that it is current on all payments required under the Plan. Pursuant to the Plan, payments will be completed by approximately May 1, 2023. Debtor states that its counsel intends to shortly file a final fee application and a motion for a final decree.

II. Findings and Conclusions

A continued Post-Confirmation Status Conference shall be held **January 15, 2019, at 10:00 a.m.** A Post-Confirmation Status Report must be submitted by no later than fourteen days prior to the hearing. Debtor shall file and serve a final fee application and a motion for a final decree such that those motions are heard prior to the date of the continued Status Conference. If favorable orders on the motions for a final fee application and final decree are entered, the continued Status Conference will go off calendar.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

CONT... 32 Cold, LLC

Chapter 11

The Debtor shall submit an order setting the continued Status Conference within seven days of the hearing.

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

Party Information

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili
Sanaz S Bereliani

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

Tuesday, January 15, 2019

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#41.00 Hearing re [213] Post-Confirmation Status Conference re Debtor's Chapter 11 Plan

FR. 7-25-18 ; 7-26-18

Docket 0

***** VACATED *** REASON: FINAL DECREE ENTERED 12/28/18**

Tentative Ruling:

7/25/2018

The Court has reviewed the post-confirmation report filed in connection with this hearing.

No appearances are required. A further post-confirmation status conference will held January 15, 2019 at 10:00 a.m. A post-confirmation report must be filed no later that 14 days prior to the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:18-01082 Gardner v. Soo-Hoo et al

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01082. Complaint by Tamara Nicole Gardner against Bryan J Soo-Hoo, Law Offices of Brian J Soo-Hoo, APC dba Bankruptcy Law Professionals. (Charge To Estate). Summons and Adversary Cover Sheet Nature of Suit: (91 (Declaratory judgment)) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: DISMISSED 6-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Bryan J Soo-Hoo

Pro Se

Law Offices of Brian J Soo-Hoo,

Pro Se

DOES 1 through 10

Pro Se

Plaintiff(s):

Tamara Nicole Gardner

Represented By
Stella A Havkin

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

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

Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

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

#101.00 Pre-Trial Conference
RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)

fr. 11-13-18

Docket 48

***** VACATED *** REASON: PER ORDER ENTERED 11-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
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11:00 AM

CONT... Timothy M Rosen

Chapter 7

Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee v.

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 1-3-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorenzo Arteaga	Pro Se
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Defendant(s):

Angelica Maria Arteaga	Pro Se
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Lorenzo Arteaga	Pro Se
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Joint Debtor(s):

Angelica Maria Arteaga	Pro Se
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Plaintiff(s):

FIDELITY NATIONAL TITLE	Represented By Karen A Ragland
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC. et al

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

fr. 11-13-18

Docket 1

***** VACATED *** REASON: DISMISSED 8/22/18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

Navient Solutions, LLC.

Pro Se

United States Department Of

Pro Se

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:17-24965 Jesus Jose Nevarez

Chapter 7

Adv#: 2:18-01069 Nevarez v. Shellpoint Mortgage Servicing et al

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01069. Complaint by Jesus J Nevarez against Shellpoint Mortgage Servicing , Quality Loan Servicing Corp , Mortgage Electronic Registration Systems,Inc , Bank of America N.A. . (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)) ,(71 (Injunctive relief - reinstatement of stay)) ,(81 (Subordination of claim or interest)) ,(91 (Declaratory judgment)) ,(01 (Determination of removed claim or cause))(Serrano, Vera)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 6-12-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Jose Nevarez	Pro Se
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Defendant(s):

Shellpoint Mortgage Servicing	Pro Se
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Mortgage Electronic Registration	Pro Se
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Bank of America N.A.	Pro Se
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Quality Loan Servicing, Corp.	Pro Se
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Plaintiff(s):

Jesus J Nevarez	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:17-25586 Soheil Khanian

Chapter 7

Adv#: 2:18-01080 Khankhanian v. Khanian

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01080. Complaint by Bahram Khankhanian against Soheil Khanian . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-12-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Soheil Khanian

Represented By
Mitchell R Sussman

Defendant(s):

Soheil Khanian

Pro Se

Plaintiff(s):

Bahram Khankhanian

Represented By
Dean P Sperling

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#106.00 Pre-Trial Conference RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud)) (Tran, Kelly Ann)

Docket 1

Tentative Ruling:

1/14/2019: No appearance is required if submitting on the court's tentative ruling below.

The Complaint alleges that Defendant made various false representations to Plaintiff to obtain a loan. The alleged misrepresentations were made verbally in a telephone conversation. The parties have stipulated that in applying for the loan, Defendant verbally identified her employer and told Plaintiff that her annual income was \$60,000. The parties dispute whether Defendant verbally represented that she would use a portion of her tax refund to pay down the loan. Plaintiff seeks a judgment that the indebtedness arising in connection with the loan is non-dischargeable pursuant to §523(a)(2)(A).

Section 523(a)(2)(A) excepts from discharge "money property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*" (emphasis added). To except from discharge indebtedness obtained by a false statement respecting a debtor's financial condition, creditors must satisfy the stricter criteria of §523(a)(2)(B). The Supreme Court has explained the structure of §523(a)(2) as follows:

The text of § 523(a)(2) plainly heightens the bar to discharge when the fraud at issue was effectuated via a "statement respecting the debtor's financial condition." The heightened requirements, moreover, are not a shield for dishonest debtors. Rather, they reflect Congress' effort to balance the potential misuse of such statements by both debtors and creditors. As the Court has explained previously:

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11:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

"The House Report on the [Bankruptcy Reform Act of 1978] suggests that Congress wanted to moderate the burden on individuals who submitted false financial statements, not because lies about financial * 1764 condition are less blameworthy than others, but because the relative equities might be affected by practices of consumer finance companies, which sometimes have encouraged such falsity by their borrowers for the very purpose of insulating their own claims from discharge." *Field v. Mans*, 516 U.S. 59, 76–77, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995).

Specifically, as detailed in *Field*, the House Report noted that consumer finance companies frequently collected information from loan applicants in ways designed to permit the companies to later use those statements as the basis for an exception to discharge. Commonly, a loan officer would instruct a loan applicant " 'to list only a few or only the most important of his debts' " on a form with too little space to supply a complete list of debts, even though the phrase, " 'I have no other debts,' " would be printed at the bottom of the form or the applicant would be " 'instructed to write the phrase in his own handwriting.' " *Id.*, at 77, n. 13, 116 S.Ct. 437. If the debtor later filed for bankruptcy, the creditor would contend that the debtor had made misrepresentations in his loan application and the creditor would threaten litigation over excepting the debt from discharge. That threat was "often enough to induce the debtor to settle for a reduced sum," even where the merits of the nondischargeability claim were weak. H.R. Rep. No. 95–595, p. 131 (1977).

Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1763–64, 201 L. Ed. 2d 102 (2018).

The Supreme Court has held that "a statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status." *Lamar*, 138 S.Ct. at 1761. Such statements can include statements pertaining to a single asset, because a "single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor's overall financial condition and can help indicate whether a debtor is solvent or insolvent, able to repay a given debt or not." *Id.*

Plaintiff's position is that Defendant obtained the loan by verbally making false

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Los Angeles
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11:00 AM

CONT... Christina Marie Uzeta

Chapter 7

statements regarding her income and her intent to pay down a portion of the loan using her tax refund. In the Court's view, the verbal statements made by Defendant qualify as statements respecting Defendant's financial condition, within the meaning of §523(a)(2)(A). Defendant's statement that she earned \$60,000 per year clearly qualifies as a statement respecting her financial condition. Defendant's representation regarding her intent to use her tax refund to pay down the loan likewise qualifies as a statement respecting her financial condition. A tax refund is an asset, and the Supreme Court has recently held that statements regarding a single asset qualify as a statement respecting a debtor's financial condition. In *Lamar*, the court held that the Defendant's statement that he was expecting a tax refund of approximately \$100,000, which would have been sufficient to pay his creditor's outstanding legal fees, was a statement respecting his financial condition. *Lamar*, 138 S.Ct. at 1757. Here, Defendant's alleged statement regarding her intent to use her tax refund to pay down the loan is strikingly similar to the statement at issue in *Lamar*.

Indebtedness obtained through use of a false statement respect a debtor's financial condition is dischargeable only under §523(a)(2)(B). The Complaint contains no claim under §523(a)(2)(B). By separate order, the Court will require Plaintiff to show cause why the Court should not dismiss this action, for failure to state a claim upon which relief can be granted, pursuant to Civil Rule 12(b)(6). The hearing on the Court's Order to Show Cause shall take place on **February 20, 2019, at 10:00 a.m.** Plaintiff shall file a written response to the Order to Show Cause by no later than **January 30, 2019**. Defendant's opposition to Plaintiff's response is due by **February 6, 2019**. Plaintiff's reply to Defendant's opposition is due by **February 13, 2019**.

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

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

CONT... Christina Marie Uzeta

Chapter 7

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:18-20102 Michael Davis Lawyer

Chapter 7

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

Docket 11

Tentative Ruling:

1/14/2019

Pleadings Filed and Reviewed

1. Notice of Motion and Motion of the United States Trustee for Extension of Deadline Date for Filing a Motion to Dismiss Under 11 U.S.C. § 707(b)(3) and a Complaint Objecting to the Debtor's Discharge Under 11 U.S.C. § 727 by the United States Trustee Only [Doc. No. 11] (the "Extension Motion")
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Michael Davis Lawyer (the "Debtor") filed this chapter 7 case on August 30, 2018 (the "Petition Date"). The first date set for the Debtor's § 341(a) Meeting of Creditors was October 4, 2018. Accordingly, the deadline to file a § 727 complaint and § 707(b)(3) motion was sixty days later, on December 3, 2018.

On November 29, 2018, prior to the expiration of the foregoing deadline, the United States Trustee (the "UST") filed a timely motion seeking to extend the deadline for sixty days, to and including February 4, 2019. The UST states that it is currently investigating whether the Debtor's case warrants dismissal under § 707(b)(3) and/or a complaint under § 727. The UST further states that, based upon its review of the Debtor's petition, schedules, § 341(a) testimony and documentation the Debtor has produced, the UST has certain questions regarding the Debtor's ownership of entities and the relating value of any such ownership. The UST states that it has not been able to complete its investigation and examination of the Debtor due to the Debtor's delayed production of requested documents and the Debtor's failure to

**United States Bankruptcy Court
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11:00 AM

CONT... Michael Davis Lawyer

Chapter 7

appear at a continued § 341(a) Meeting of Creditors on November 20, 2018.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Extensions of time to object to discharge are governed by Rule 4004(b) which provides, in relevant part:

(b) Extension of Time.

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4004(b)(1).

Similarly, extensions of time to file a motion to dismiss a case for abuse under § 707(b) are governed by Rule 1017(e)(1), which provides, in relevant part:

. . . a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss.

Fed. R. Bankr. P. 1017(e)(1).

The Court finds that the Extension Motion was timely filed before the expiration of the sixty-day deadline on December 3, 2018. Based upon the representations in the Extension Motion and the Declaration of Alvin Mar, the Court finds that the UST has established adequate cause to grant the UST a sixty-day extension, to and including February 4, 2019 to file a complaint under § 727 or a motion under § 707(b) expired.

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

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CONT... Michael Davis Lawyer

Chapter 7

The UST is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Party Information

Debtor(s):

Michael Davis Lawyer

Represented By
Daniel King

Trustee(s):

Sam S Leslie (TR)

Pro Se

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

Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

Adv#: 2:18-01067 Base Architecture Planning & Engr., Inc. v. UNITED STATES OF

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01067. Complaint by Base Architecture Planning & Engr., Inc. against UNITED STATES OF AMERICA on behalf of the INTERNAL REVENUE SERVICE. (Fee Not Required). Nature of Suit: (91 (Declaratory judgment)) (Hayes, M)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

Defendant(s):

UNITED STATES OF AMERICA

Pro Se

Plaintiff(s):

Base Architecture Planning & Engr.,

Represented By
M Jonathan Hayes

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

Tuesday, January 15, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 11

#109.00 HearingRE: [21] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 21

Tentative Ruling:

1/14/2019

For the reasons set forth below, the Motion is GRANTED and the case is CONVERTED to a case under chapter 7.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 21] (the "Motion")
2. Notice of the Motion [Doc. No. 23]
3. As of the preparation of this tentative ruling, no opposition is on file.

Other pleadings reviewed:

4. Debtor's Schedules and Statement of Financial Affairs ("SOFA") [Doc. No. 9]
5. Debtor's November Monthly Operating Report ("MOR") [Doc. No. 26]
6. Debtor's Disclosure Statement & Chapter 11 Plan of Reorganization (the "Plan") [Doc. Nos. 27 & 28]
7. Notice of Motion and Motion in Individual Chapter 11 Case For Order Authorizing Debtor In Possession to Employ General Bankruptcy Counsel and To File Interim Fee Applications Using Procedure in LBR 9013-1(o) [Doc. No. 17] (the "Original Employment Application")
 - a. United States Trustee's Objection to Motion in Individual Chapter 11 Case for Order Authorizing Debtor In Possession to Employ General Bankruptcy Counsel and Request for Hearing [Doc. No. 18] (the "Original Objection to Employment Application")
1. Notice of Motion and Motion in Individual Chapter 11 Case For Order Authorizing Debtor In Possession to Employ General Bankruptcy Counsel [Doc.

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Chapter 11

No. 19] (the "Amended Employment Application")

- a. United States Trustee's Objection to Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel Filed on December 11, 2018 and Request for Hearing [Doc. No. 24] (the "Objection to Amended Employment Application")
2. Case docket in *In re Anoush Aivazian*, Case No. 2:18-bk-14420-BR, Chapter 7 case filed 4/18/18, dismissed 8/2/18
3. Case docket in *In re Anoush Aivazian*, Case No. 2:18-19429-NB, Chapter 13 case filed 8/15/18, dismissed 10/4/18.

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession, Hakop Jack Aivazian (the "Debtor"), filed this voluntary chapter 11 case on October 16, 2018 (the "Petition Date"). The Debtor is the self-employed owner of Flamingo Sand & Gravel ("FSG"), which the Debtor operates out of his residence located at 1257 N. Oxford Avenue, Pasadena, California 91104 (the "Oxford Property"). The Debtor's combined net monthly income from FSG operations and his non-filing spouse, Anoush Aivazian's ("Mrs. Aivazian") employment is \$10,009.

In addition to the Oxford Property, the Debtor owns two parcels of real property: (i) 1728-1730-1734 E. Woodbury Avenue, Pasadena, CA 91104 (the "Woodbury Property"); and (ii) 1434 N. Sierra Bonita Avenue, Pasadena, CA 91104 (the "Sierra Property," and together with the Oxford Property and Woodbury Property, the "Properties"). The Debtor and Mrs. Aivazian hold title to the Properties as joint tenants. The Debtor and Mrs. Aivazian lease out the Woodbury and Sierra Properties.

The Debtor is in default of his mortgage obligations with secured lenders on all three Properties. The Debtor sought bankruptcy protection to delay non-judicial foreclosure proceedings. The Debtor estimates there is approximately \$1,270,000 in equity in the Properties and is in the process of trying to refinance the Properties to pay off all of his secured lenders.

Mrs. Aivazian's Prior Bankruptcy Filings

On April 18, 2018, with the assistance of Mr. Leo Fasen ("Mr. Fasen"), Mrs.

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Aivazian filed a voluntary chapter 7 case, Case No. 2:18-bk-14420-BR. On August 2, 2018, the Bankruptcy Court entered an order dismissing the case for failure to appear at the 341(a) Meeting of Creditors [Doc No. 34].

On August 15, 2018, with Mr. Fasen's assistance, Mrs. Aivazian filed a voluntary chapter 13 case, Case No. 2:18-bk-19429-NB. On September 6, 2018, Mrs. Aivazian filed a Motion to Continue the Automatic Stay pursuant to § 362(c)(3) based on her prior bankruptcy filing [Doc. No. 18]. At the self-calendared hearing on October 2, 2018, the Bankruptcy Court denied the motion as untimely and ordered the case dismissed [Doc. No. 23].

Application to Employ Mr. Fasen as Debtor's Bankruptcy Counsel

On November 23, 2018, the Debtor filed an application for order authorizing employment of Mr. Fasen as Debtor's general bankruptcy counsel [Doc. No. 18] (the "Original Employment Application"). The Office of the United States Trustee (the "UST") filed a timely objection and request for hearing asserting, among other things, that (i) the Original Employment Application contained incorrect and misleading information about Mr. Fasen's pre-petition claim against the Debtor's estate and unauthorized post-petition payments on account of such claim; and (ii) Mr. Fasen failed to demonstrate that he has the requisite chapter 11 experience to competently represent a chapter 11 debtor [Doc. No. 18] (the "Original Objection to Employment Application").

On December 11, 2018, the Debtor filed an Amended Employment Application [Doc. No. 19] and Application for Compensation under § 328 [Doc. No. 20]. On December 20, 2018, the UST again timely objected, requested a hearing and reiterated the arguments stated in its Original Objection to Employment Application [Doc. No. 24] (the "Objection to Amended Employment Application"). The UST acknowledges that the Amended Employment Application attempted to cure the lack of disclosure of pre-and post-petition compensation but argues that failure to make required disclosures in an employment application warrants denial of employment and disgorgement of fees. *Id.*

As of the preparation of this tentative ruling, the Debtor has not scheduled a hearing on the Amended Employment Application.

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Chapter 11

The UST's Motion Under § 1112(b) to Convert, Dismiss or Appoint a Chapter 11 Trustee

On December 18, 2018, the UST filed a motion to convert, dismiss or appoint a chapter 11 Trustee under § 1112(b), based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed;
- ii. Debtor has not filed:
 - a. Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts (general, payroll and tax) including: (1) a copy of the "debtor-in-possession" check for each account;
 - b. Sufficient evidence of current insurance coverage including the declaration page from State Farm Insurance regarding coverage for Debtor's 2018 Mercedes C300 motor vehicle.
 - c. Monthly Operating Reports ("MORs") for the Months of October 2018 and November 2018; and
- iii. Quarterly fees for the period ending 12/31/18 continue to accrue.

Declaration of Gary Baddin ("Baddin Decl.").

Mr. Baddin states that he sent an e-mail to the Debtor's counsel on November 29, 2018 to inquire about the status of the missing proof of insurance and received no response prior to filing the UST Motion. Mr. Baddin also attached a copy of a check from Debtor's debtor-in-possession bank account as Exhibit 2 and highlights that the bank account information does not list the Debtor's bankruptcy case name (i.e. *In re Hakop Jack Aivazian*), but instead identifies "Estate of Flamingo Sand & Gravel," which does not comply with the UST requirements. The UST also points out that this is the third bankruptcy case filed this year between Mrs. Aivazian and the Debtor.

For the foregoing reasons, the UST recommends that the case be converted to a case under chapter 7 so that a chapter 7 trustee can administer the Properties for the benefit of creditors.

As of the preparation of this tentative ruling, the Debtor has not filed a response or opposition to the UST's Motion. However, the Debtor has filed a November MOR,

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Chapter 11

Plan and Disclosure Statement [Doc. Nos. 26, 27 & 28].

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(B) gross mismanagement of the estate; (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

The Court finds more than sufficient "cause" exists within the meaning of § 1112(b) to convert, dismiss or appoint a chapter 11 trustee as follows. First, as the UST points out, the Debtor has failed, without explanation, to timely comply with a number of its filing and reporting requirements. The Debtor still has not filed an October MOR, the Debtor's untimely-filed November MOR is deficient and missing information, and there is no evidence in the record demonstrating that Debtor has presented valid proof of insurance for his motor vehicle. The UST's evidence also demonstrates that the Debtor's debtor-in-possession bank account does not comply with the UST guidelines and that Debtor's counsel has failed to cooperate with the UST's requests for information. Additionally, the Debtor failed to file an opposition or response to the UST's Motion. Although the Debtor attempted to address some of the UST's concerns by filing a Disclosure Statement and Plan, the Debtor failed to self-calendar a hearing on the adequacy of the Disclosure Statement.

The Court also independently notes that the Debtor states that it leases two of the Properties out to tenants but has not sought authority to use cash collateral. Therefore,

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the Debtor may be using cash collateral without this Court's or the secured creditor's authorization or consent.

Furthermore, the Debtor has not yet obtained an order authorizing the employment of Mr. Fasen and has failed to comply with Local Bankruptcy Rule 9013-1(o)(1)(4) by not obtaining a hearing on its Amended Employment Application within 14 days of receiving the UST's Objection to Amended Employment Application. Based upon this Court's review of the UST's objections, the deficiencies discussed herein, and the Court's review of the dockets in Mrs. Aivazian's dismissed bankruptcy cases, the Court agrees that Mr. Fasen appears to lack the requisite competence to effectively represent the Debtor in bankruptcy.

The Court is sympathetic to the Debtor's efforts to avoid foreclosure and preserve his equity in the Properties but given that this is the Debtor and Mrs. Aivazian's third bankruptcy filing within a year, the Court does not take Debtor's derogation of his duties lightly.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The Court finds that conversion to chapter 7 would be in the best interest of all creditors. It appears that there is equity in the Properties that a trustee could administer for the benefit of creditors.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED and the case is CONVERTED to a case under chapter 7.

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The UST is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

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Wednesday, January 16, 2019

Hearing Room 1568

10:00 AM

2:12-39028 Jan Howard Lankin and Sandra Ann Lankin

Chapter 7

#1.00 APPLICANT: Trustee - David M Goodrich
Hearing re [61]] and [64] Chapter 7 Trustee's Final Report, Application for
Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

1/15/2019

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

Total Fees: \$1,250

Total Expenses: \$61.24

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

Party Information

Debtor(s):

Jan Howard Lankin

Represented By
Michael H Raichelson

Joint Debtor(s):

Sandra Ann Lankin

Represented By
Michael H Raichelson

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CONT... Jan Howard Lankin and Sandra Ann Lankin

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Trustee(s):

David M Goodrich (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:15-21707 Taylor I Heo

Chapter 7

#2.00 HearingRE: [51] Motion to Avoid Lien Property Lien with BLAS SANCHEZ , in addition to Motion For Sanctions for Violation of the Discharge Injunction

Docket 51

Tentative Ruling:

1/15/2019

For the reasons set forth below, the Motion is GRANTED IN-PART AND DENIED IN-PART.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion to Avoid Lien Recorded in Violation of the Order of the Bankruptcy Court and to Request Sanctions for Violating the Court Order [Doc. No. 51] (the "Motion")
2. Opposition of Blas Sanchez to Debtor's Motion to Avoid Lien Recorded [Doc. No. 53] (the "Opposition")
3. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Taylor I. Heo (the "Debtor") filed this voluntary chapter 7 case on July 25, 2015. The Debtor received a discharge of her debts on November 2, 2015 [Doc. No. 13] (the "Discharge Order") and the case was subsequently closed [Doc. No. 14]. On March 17, 2016, the Debtor moved to reopen this case to file lien avoidance motions [Doc. No. 16]. On March 24, 2016, the Court reopened Debtor's case [Doc. No. 19].

On April 12, 2016, the Debtor filed a motion to avoid a judicial lien (the "Lien Avoidance Motion") held by Blas Sanchez and Oneyda Banegas ("Creditors") [Doc. No. 23]. The lien encumbered property located at 1100 S. Hope Street, Apt. 1607, Los Angeles, CA 90015 (the "Property"). On April 25, 2016, Creditors filed an Opposition to the Lien Avoidance Motion [Doc. No. 25]. On May 13, 2016, the Court denied the Lien Avoidance Motion without prejudice because the Debtor failed to timely schedule a hearing on the motion as required by Local Bankruptcy Rule ("LBR") 9013-1(o)(4). Debtor subsequently scheduled a hearing on the Lien Avoidance Motion [Doc. No. 33].

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As set forth in more detail in the Court's tentative ruling, which the Court adopted as its final ruling [Doc. No. 37] (the "Ruling"), at the hearing on June 22, 2016, the Court granted the Lien Avoidance Motion in-part and avoided \$175,813.91 of Creditors' \$197,371.69 lien, thereby preserving Creditors' lien in the amount of \$21,557.78. The Court entered its order on the Lien Avoidance Motion on July 7, 2016 [Doc. No. 43] (the "Partial Lien Avoidance Order") and closed the Debtor's case on August 3, 2016.

Debtors Motion to Avoid Lien and Request For Sanctions

On November 9, 2018, the Debtor moved to reopen this case, which the Court granted by order entered November 13, 2018 [Doc. Nos. 46 & 49]. On December 10, 2018, the Debtor filed her *Motion to Avoid Lien Recorded in Violation of the Bankruptcy Court and to Request Sanctions for Violating the Court Order* [Doc. No. 51] (the "Motion"). The Debtor states that after the Debtor served the Partial Lien Avoidance Order on the Creditors, Mr. Sanchez re-recorded the same abstract of judgment (in the amount of \$154,682.00) (the "Abstract of Judgment") with the Los Angeles County Recorder's office in violation of the Partial Lien Avoidance Order. Motion, Ex. A. Accordingly, the Debtor seeks an order avoiding the Abstract of Judgment and imposing \$2,360 in sanctions pursuant to § 105(a) against Mr. Sanchez for violating the discharge injunction, which represents the attorneys' fees and cost the Debtor has had to incur to bring this motion.

On December 31, 2018, Mr. Sanchez filed a timely Opposition to the Motion [Doc. No. 53] (the "Opposition"). Mr. Sanchez states that pre-petition, on March 25, 2014, he hired Joshua P. Friedman to collect on the judgment he had previously obtained against the Debtor. Mr. Friedman filed an amended judgment adding his name as the attorney of record. Opposition, Ex. B. After advising Mr. Friedman about the Debtor's bankruptcy filing, Mr. Friedman advised Mr. Sanchez that he would not be handling any bankruptcy proceedings and Mr. Sanchez was therefore forced to substitute himself in pro-per. Accordingly, on June 30, 2016, Mr. Sanchez recorded a substitution of attorney and was issued an amended abstract of judgment on July 1, 2016. Opposition, Ex. C.

Mr. Sanchez denies that he willfully violated the Partial Lien Avoidance Order and submits that he was simply removing his prior counsel and placing himself on the judgment. Accordingly, Mr. Sanchez requests that the Court deny the Debtor's request to impose sanctions against him. Mr. Sanchez also requests authority to record an

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amended abstract of judgment in the amount of \$71,761.98 (attached as Ex. D), which he calculates as follows:

Creditor Blas Sanchez's lien was partially granted lien was \$204,943.02 as of March 31, 2016. \$175,813.91 was avoided leaving \$29,129.11. A 10% interest per annum, the judgment accrued daily interest of \$42.3786. There were 1006 days between March 31, 2016 and December 31, 2018. During this period, interest of \$42,632.87 accrued for a total of \$71,761.98.

Opposition, p. 2, ¶¶ 8-9.

As of the preparation of this tentative ruling, the Debtor has not filed a reply.

II. Findings of Fact and Conclusions of Law

A. The Abstract of Judgment is Void

Mr. Sanchez does not dispute that on or about July 1, 2016, he recorded the Abstract of Judgment in the amount of \$154,682. Opposition, ¶ 4 & Ex. C. Although Mr. Sanchez asserts that he did not willfully violate this Court's Partial Lien Avoidance Order, he offers no explanation for why the amended Abstract of Judgment does not take into account that his lien was partially avoided and reduced to \$21,557.78. Accordingly, the Court finds that the Abstract of Judgment is void. Mr. Sanchez is directed to take all necessary steps to release his lien to the extent it exceeds \$21,557.78.

Mr. Sanchez's request to record an amended abstract of judgment in the amount of \$71,761.98 is DENIED. As set forth in this Court's Ruling [Doc. No. 37], as of the Petition Date, Mr. Sanchez's lien was \$197,371.69 and this Court determined that \$175,813.91 of that amount impaired the Debtor's homestead exemption and was therefore avoided. [Note 1] The Court's ruling left Mr. Sanchez with a secured lien of \$21,557.78 (i.e. \$197,371.69 - \$175,813.91 = \$21,557.78) and an unsecured claim of \$175,813.91 that, by virtue of the Discharge Order, was discharged.

Furthermore, Mr. Sanchez's partially avoided lien is permanently fixed at \$21,557.78 and Mr. Sanchez is not entitled to any post-avoidance interest. *See Rosen v. Chiu (In re Chiu)*, 2017 Bankr. LEXIS 821 at *8-9 (B.A.P. 9th Cir. Mar. 27, 2017)

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(citing *Hanger v. Bank of A. Nat'l Trust & Sav. Ass'n (In re Hanger)*, 196 F.3d 1292 (9th Cir. 1999), *aff'g & adopting*, 217 B.R. 592 (B.A.P. 9th Cir. 1997) ("as a result of the 1994 amendments to § 522(f), any unsecured portion of a judgment lien can be avoided under the statute to ensure that any postpetition appreciation inures to the benefit of the estate or the debtor").

Mr. Sanchez is cautioned that if he records an amended abstract of judgment in any amount exceeding \$21,557.78, at the request of the Debtor by motion this Court will impose sanctions based upon a willful violation of the discharge injunction.

B. The Debtor Has Not Established By Clear And Convincing Evidence That Sanctions Are Justified

i. Standard for Violation of Discharge Injunction

Section 524 of the Bankruptcy Code provides:

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under [§ 727], whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived

"A party injured by a violation of the discharge injunction has no private cause of action for damages under § 524 or § 105." *In re Breul*, 533 B.R. 782, 791 (Bankr. C.D. Cal. 2015) (citing *Walls v. Wells Fargo Bank*, 276 F.3d 502, 504 (9th Cir. 2002)). "Rather, a violation under § 524(a) is enforced through the bankruptcy court's contempt authority under § 105(a)." *Id.* (citing *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.2d at 507). As the Court in *In re Breul* further explained:

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The court's contempt authority under § 105(a) is only a civil contempt authority and allows only for civil sanctions as the appropriate remedy. *In re Moreno*, 479 B.R. 553, 569 (Bankr. E.D. Cal. 2012) (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003) (considering contempt sanctions in context of stay violation)). Civil sanctions must be either compensatory or designed to coerce compliance. *Id.* (internal citation omitted). For a discharge violation, 'compensatory civil contempt allows an aggrieved debtor to obtain compensatory damages, attorney's fees, and the offending creditor's compliance with the discharge injunction.' *Walls*, 276 F.3d at 507.

'[T]he [aggrieved debtor] seeking contempt sanctions has the burden of proving, by clear and convincing evidence, that the sanctions are justified.' *ZiLOG, Inc., v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006). And to justify sanctions, the debtor must prove (1) that the offending creditor knew the discharge injunction was applicable and (2) that the creditor intended the actions which violated the injunction. *Bennett*, 298 F.3d at 1069 (citation omitted). After the debtor meets his/her burden, the burden then shifts to the creditor to demonstrate why it was unable to comply with the discharge injunction. *See id.* (citation omitted).

533 B.R. at 791-92.

ii. Analysis

In support of the Motion, the Debtor states that at some point after this Court entered the Lien Avoidance Order on July 7, 2016, the order was served on the Creditors. Heo Declaration, ¶ 7. The Debtor also attached a copy of a recorded abstract of judgment issued on July 1, 2016 and Mr. Sanchez admits that he intentionally recorded the Abstract of Judgment. Opposition, ¶ 4. Therefore, the Court finds that the second prong is satisfied – that Mr. Sanchez intended the actions which violated the discharge injunction.

However, the Debtor has not presented any evidence to prove that Mr. Sanchez knew the discharge injunction was applicable to his claim. Based upon this Court's independent review of the Debtor's schedules and master mailing list of creditors, it

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appears that the Debtor provided the following two addresses for Mr. Sanchez:

Blas Sanchez; Oneyda Banegas
c/o PRA Recovery
1045 Route 109, #105
Lindenhurst, NY 11757

Blas Sanchez; Oneyda Banegas
c/o Joshua P. Friedman, Esq.
Joshua P. Friedman and Associates
9903 Santa Monica blvd., #1108
Beverly Hills, CA 90212

Doc. No. 1.

As a result, there is no evidence to show that Mr. Sanchez *personally* received the Discharge Order or that PRA Recovery or Mr. Friedman ever informed Mr. Sanchez of the discharge injunction. The fact that Mr. Sanchez received notice of the Lien Avoidance Motion in time to file an opposition, despite the Debtor only serving the motion on Mr. Friedman, makes it more likely that Mr. Friedman also informed Mr. Sanchez of the Debtor's discharge. However, this does not amount to clear and convincing evidence that Mr. Sanchez knew of the discharge injunction.

Moreover, the Debtor does not point to anything in the pleadings filed in connection with the Lien Avoidance Motion that would have put Mr. Sanchez on notice of her discharge or made him aware of the implications of lien avoidance prior to Mr. Sanchez's recording of the Abstract of Judgment. Instead, Mr. Sanchez's statement that he "denies that he willfully violated the order he simply was removing his prior counsel and placing himself on the judgment" suggests that he was not aware of the discharge injunction or that the discharge injunction was applicable to his partially avoided claim.

Therefore, the Court finds that the Debtor has not carried her burden under *ZiLOG's* high burden of proof with respect to the first prong. Accordingly, the Debtor's request for an order imposing sanctions against Mr. Sanchez is DENIED.

III. Conclusion

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Taylor I Heo

Chapter 7

For the reasons set forth above, the Motion is GRANTED IN-PART AND DENIED IN-PART.

The Debtor is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Note 1: Mr. Sanchez asserts that the un-avoided portion of his lien was \$29,129.11, based upon a March 31, 2016 valuation. However, as set forth in the Ruling, Ninth Circuit authority requires lien valuation under § 522(f) to be as of the petition date.

Party Information

Debtor(s):

Taylor I Heo

Represented By
Young K Chang

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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2:18-24145 Fortuna Due, LLC

Chapter 7

#3.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual - LLC; filed by Petitioning Creditors: Jeffrey Moreno, George Hipolito, Eileen Young . (Milano, Sonny) Additional attachment(s) added on 12/4/2018 (Milano, Sonny).

Docket 1

Tentative Ruling:

1/15/2019

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

Pleadings Filed and Reviewed:

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

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

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

Based upon the foregoing, the involuntary petition is DISMISSED.

A motion seeking relief from the automatic stay (the "RFS Motion") has been set for hearing on February 4, 2019, at 10:00 a.m. The RFS Motion seeks stay-relief on the ground that Movant's interest in the property is not protected by an adequate equity cushion. The RFS Motion does not seek stay-relief under § 362(d)(4) or on the ground

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CONT... Fortuna Due, LLC

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that the involuntary petition was filed in bad faith.

Notwithstanding the dismissal, the Court will retain jurisdiction to hear the RFS Motion. Entry of an order on the RFS Motion will provide a record in the event that the Property is subject to additional bankruptcy filings.

The Court will prepare and enter an appropriate order.

Party Information

Debtor(s):

Fortuna Due, LLC

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#4.00 Hearing
RE: [35] Motion for approval of chapter 11 disclosure statement

fr. 12-4-18

Docket 35

Tentative Ruling:

1/15/2019

No appearances required. Following a December 4, 2018, hearing on the adequacy of the Debtor's Disclosure Statement [Doc. No. 35], the Court set this status conference to allow time for the Debtor to determine the extent and validity of Direct Capital Corporation's ("DCC") claim. On December 10, 2018, this Court entered an order approving a stipulation between the Debtor and DCC regarding its claim [Doc. No. 50].

The Court has reviewed the Response to Debtor's Proposed Disclosure Statement and Supplemental Declaration of Eric Alan Mitnick filed by Benito Barbosa [Doc. Nos. 58, 59]. In addition to the issues this Court raised in its tentative ruling [Doc. No. 44], Mr. Barbosa contends that the Disclosure Statement lacks adequate information about the following: (i) the Debtor's transfer of his ownership interest in the Verdun Property to his wife; (ii) how the Debtor's monthly income draws are determined, information concerning the Debtor's wife's income, and financial information about the Debtor's podiatry practice; (iii) financial information about Stephens Associated Services; (iv) the Debtor's alleged inheritance of \$44,000 in 2017 and how such funds were spent; and (v) the Debtor's alleged transfer of funds into an IRA account. In reply, the Debtor [Doc. No. 60] requests an opportunity to file an amended disclosure statement and states that he will attempt to address all of these issues as well as the issues raised by the Court if permitted to do so.

Based upon the foregoing, **the hearing is CONTINUED to March 13, 2019 at 10:00 a.m.** The Debtor is directed to file an amended disclosure statement by no later than February 15, 2019. The deadline to oppose the amended disclosure statement is February 27, 2019. The deadline to file a reply to any opposition(s) is March 6, 2019.

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CONT... Dwight Gregory Stephens

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The Debtor is directed to give notice of the continued hearing and lodge a scheduling order within 7 days of the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
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10:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#5.00 Hearing
RE: Objection to the DCC Claim

Docket 35

***** VACATED *** REASON: ORDER ENTERED ON 12-10-18**

Tentative Ruling:

12/3/2018

For the reasons set forth below, CONTINUE HEARING to January 16, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 35] (the "Disclosure Statement")
2. Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 36] (the "Plan")
3. Notice of Hearing on Adequacy and Approval of Debtor's Disclosure Statement Describing Individual Chapter 11 Plan [Doc. No. 37]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, Dwight Stephens (the "Debtor") filed a voluntary individual chapter 11 petition on March 21, 2018. Debtor presently seeks approval of his Disclosure Statement [Doc. No. 35]. The following provisions are the material provisions of Debtor's Plan [Doc. No. 36]:

i. The Plan is a reorganizing plan. The Debtor proposes to fund the Plan with (a) pre- and post-confirmation employment and social security income; and (b) a one-time, \$50,000, contribution from Debtor's non-filing spouse that will come from a reverse mortgage associated with real property located at 5337 S. Verdun Avenue, Los Angeles, CA (the "Verdun Property"). Debtor states that the Verdun Property is the separate property of his non-filing spouse because the funds used to acquire the Verdun Property were the separate property of his non-filing spouse. Debtor states that he has never been on title for the Verdun Property, but is a co-obligor on the note/mortgage.

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CONT... Dwight Gregory Stephens

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ii. Debtor proposes a March 2019 effective date.

iii. Debtor anticipates having approximately \$54,000 in cash on hand to pay \$52,345 in anticipated effective date payments.

iv. Debtor proposes to repay priority tax claims in full with 5% interest over 24 months.

v. Class 2(a) consists of the unimpaired secured claim of Mr. Cooper, which holds a first-priority lien on the Property. Debtor and his non-filing spouse are currently making \$1,041 monthly mortgage payments, but Debtor anticipates this payment will be reduced to \$500/month after obtaining a reverse mortgage.

vi. Class 6(a) consists of general unsecured claims of \$100 or less and any allowed general unsecured claim larger than \$100, but whose holder agrees to reduce its claim to \$100. Debtor proposes to pay each member of this class 100% of their claim on the effective date.

vii. Class 6(b) consists of the following remaining general unsecured claims:

(a) Benito Barbosa. Mr. Barbosa filed Proof of Claim 4-1 asserting an unsecured claim of \$2,139,530.42 resulting from a pre-petition judgment. Debtor proposes to treat Mr. Barbosa's claim as an allowed general unsecured claim in that amount.

(b) Direct Capital Corporation ("DCC"). DCC filed Proof of Claim 2-1 (the "DCC Claim") asserting a priority claim in the amount of \$97,111.83 pursuant to a recorded abstract of judgment. Debtor proposes to treat DCC's claim as wholly unsecured on the basis that Debtor has no estate property to which the abstract could attach.

(c) Spectrum Business ("SB"). SB has not filed a proof of claim. Debtor proposes to pay SB as an allowed general unsecured claimant in the amount of \$615.

(d) University of Illinois ("UI"). UI has not filed a proof of claim. Debtor proposes to pay UI as an allowed general unsecured claimant in the amount of \$350.

Debtor proposes to pay \$93,250, or 4%, in pro-rata distributions to Class 6(b) over a five year period with no interest as follows: \$50,000 (month 1); \$500/mo (months 2-24); \$900/mo (months 25-60). Debtor's liquidation analysis states that this distribution

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CONT... **Dwight Gregory Stephens**

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exceeds the 0% distribution general unsecured creditors would receive if the case were converted to a case under chapter 7.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a).

Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14)

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financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Here, there are a number of issues that require this Court to continue the hearing on approval of the adequacy of the Disclosure Statement. First, the Debtor states that the Verdun Property is not property of the estate because Debtor’s non-filing spouse used separate property funds to acquire the Verdun Property. However, the Debtor also states that he is a co-obligor on the mortgage, so it is conceivable that Debtor has a community property interest in the Verdun Property if his non-filing spouse and he have been using community property income to service the mortgage and make repairs.

If this is the case, then the Debtor’s liquidation analysis, which values the Debtor’s interest in the Verdun Property as \$0.00 is incorrect and needs to be amended. If this is not the case, then the Disclosure Statement, Plan, and Debtor’s Schedules do not adequately explain how Mr. Cooper is a secured creditor of the Debtor’s estate or why the Debtor’s Plan proposes to treat Mr. Cooper as such. Any amended disclosure statement must clearly show why Debtor’s interest in the Verdun Property is \$0.00.

Second, the Debtor states that the DCC Claim is not entitled to treatment as a secured creditor because the Debtor does not have any secured claim upon which DCC’s claim could attach. **[Note 1]** Accordingly, Debtor proposes to treat the DCC Claim as a general unsecured Class 6(b) claim. However, pursuant to 11 U.S.C. § 502(a), “[a] claim or interest ... is deemed allowed, unless a part in interest ... objects.” Based upon a review of the docket, it appears that the Debtor has not filed an objection to the DCC Claim or otherwise indicated an intention to do so. Therefore, DCC currently holds a secured claim and, absent Debtor moving to reclassify the claim through a properly noticed claim objection motion, the Disclosure Statement and Plan need to be amended to reflect this.

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Due to the sizeable amount of the DCC Claim, it appears appropriate to continue the hearing on consideration of the Disclosure Statement until after the extent and validity of the DCC Claim has been resolved. Therefore, the following dates and deadlines shall apply:

1. The Disclosure Statement Hearing is **CONTINUED to January 16, 2019 at 10:00 a.m.** No further briefing will be permitted. At the continued hearing, the Court will conduct a status conference to set a deadline for the Debtor to file an amended Disclosure Statement and Plan and to determine whether a further hearing is necessary.

2. The deadline for the Debtor to file an objection to the DCC Claim is **December 14, 2018**. If the Debtor elects to object to the DCC Claim, the Court will conduct a hearing on Debtor's Claim Objection on **January 16, 2019 at 10:00 a.m.** Opposition and reply deadlines will be in accordance with applicable local rules.

The Debtor is directed to lodge a scheduling order consistent with this ruling within seven days of the hearing.

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

Note 1: For the same reasons as described above in connection with Mr. Cooper's claim, there is insufficient information for the Court to be able to assess the validity of Debtor's position.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#6.00 Hearing re [[73] Debtor's disclosure statement

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 12-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#7.00 HearingRE: [868] Motion to Abandon / Plan Administrator's Motion to Abandon Real Property. Gail)

Docket 868

Tentative Ruling:

1/15/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Motion to Abandon Real Property [Doc. Nos. 865 and 868] (the "Motion")
 - a) Notice of Plan Administrator's Motion to Abandon Real Property [Doc. No. 866]
- 2) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016 (the "Petition Date"). On June 18, 2018, the Court entered an order confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Plan"). The Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of the estate. (The Plan provided that all assets of the estate remained vested in the estate. *See* Plan at Art. 3.)

The Plan Administrator moves to abandon the estate's interest in vacant real property located in the City of Azusa, California, designated as APN 8610-022-022 (the "Azusa Property"). The estate holds title to the Azusa Property pursuant to a stipulation entered in March 2018 between Liberty and Lucy Gao. The Plan Administrator has employed Bill Friedman and Thomas Bleumel of Coldwell Banker, who have marketed the Azusa Property for approximately six months. The Azusa Property was initially listed at a sales price of \$75,000. The price was reduced to \$49,000 and then to \$34,900. Based on conversations with the realtors, the Plan Administrator believes that further price reductions will not achieve a sale as a result of fundamental problems with the property. In particular, the parcel lacks any available utilities; its size, shape, and location make it undesirable for most buyers; and the City of Azusa will not permit development on the

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site.

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The Plan Administrator seeks to abandon the Property back to Lucy Gao to avoid the accrual of property taxes, costs of insurance, and other potential liabilities. No opposition to the Motion is on file.

II. Findings and Conclusion

The Plan provides, in relevant part, that "the Plan Administrator, on behalf of the Estate, may abandon any Asset that the Plan Administrator believes, in good faith, has no meaningful value to the Estate." Plan at Art. VII.B. The Plan lists the Azusa Property as a "Real Estate Asset."

Section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In determining whether abandonment is appropriate, courts defer to the estate representative's business judgment. *See, e.g., In re Moore*, 110 B.R. 924, 927 (Bankr. C.D. Cal. 1990) ("[W]hen called upon to review contested applications for abandonment, a court must focus its examination upon the reasons underlying the trustee's determination and affirm a decision which reflects a business judgment made in good faith, upon a reasonable basis and within the scope of his authority under the Code").

Here, the Plan Administrator has diligently marketed the Azusa Property but no buyers have emerged. The evidence submitted by the Plan Administrator establishes that further price reductions are unlikely to yield a buyer, because the Azusa Property cannot be developed, lacks utilities, and has an undesirable size, shape, and location. The Property's dismal sale prospects, combined with the tax and insurance liabilities that will be accrued if the estate maintains possession, make abandonment appropriate.

Section 554 does not specify to whom abandonment is made. The leading treatise, *Collier on Bankruptcy*, holds that property may be abandoned "to any part with a possessory interest in it." 5 *Collier on Bankruptcy* ¶ 554.02[3] (Richard Levin & Henry J. Sommers eds., 16th ed.). This conclusion is echoed in cases addressing the issue. *See, e.g., Dewsnup v. Timm (In re Dewsnup)*, 908 F.2d 588, 590 (10th Cir. 1990), *aff'd sub nom. Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) ("Following abandonment, 'whoever had the possessory right to the property at the filing of bankruptcy again reacquires that right'") (internal citation omitted); *Eliezer Miller v. Generale Bank Nederland, N.V. (In re Interpictures Inc.)*, 217 F.3d 74, 76 (2d Cir. 2000) ("Several courts, citing the legislative history to Section 554(b), have held that property should be abandoned only to a holder of a possessory interest in it.... The rationale for this rule is that once the debtor's property is abandoned in bankruptcy, the

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property should be treated as though no bankruptcy proceedings had occurred and therefore revert to the party that held a pre-petition interest in it.").

The Court approves the Plan Administrator's request that the Azusa Property be abandoned to Lucy Gao. Prior to the Petition Date, Golden Field Investment LLC ("Golden Field") held title to the Azusa Property. Ms. Gao dissolved Golden Field in December 2016 and transferred the Azusa Property to Lowridge Place LLC ("Lowridge Place"). Gao subsequently dissolved Lowridge Place and transferred the Azusa Property to Liberty.

Because Golden Field and Lowridge Place have been dissolved, the Azusa Property cannot be abandoned to them. Ms. Gao was a former member or manager of the limited liability companies that previously held a possessory interest in the Azusa Property. The Court finds that in this capacity, Ms. Gao held a possessory interest in the Azusa Property, and that accordingly abandonment of the Azusa Property to Ms. Gao is warranted.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 HearingRE: [1147] Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property; Declaration of Richard Adcock In Support Thereof

Docket 1147

Tentative Ruling:

1/15/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Motion for Entry of an Order Pursuant to §365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 1147] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1145, 1147, 1149 and 1150 [Doc. No. 1157]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Entry of an Order Pursuant to §365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 1175]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors' business, including office and operational space. Debtors move for a 90-day extension of the deadline to assume or reject these unexpired leases (such deadline, the "Assumption/Rejection Deadline"). Debtors intend to liquidate their assets through a series of sales, and anticipate that some or all of the unexpired leases will be assumed and assigned in connection with future sales. Debtors are current on postpetition rent under the leases.

The Official Committee of Unsecured Creditors has no objection to the Motion. No

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opposition to the Motion is on file.

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II. Findings and Conclusions

Section 365(d)(4) provides:

- (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—
 - (i) the date that is 120 days after the date of the order for relief; or
 - (ii) the date of the entry of an order confirming a plan.
- (B)
 - (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
 - (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

The Court finds that the Debtors have shown cause to extend the Assumption/Rejection Deadline. "[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made." *Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 237 (B.A.P. 9th Cir. 1988), aff'd, 875 F.2d 1380 (9th Cir. 1989). Here, the Debtors are current on all postpetition lease obligations, and represent that they will remain current on such obligations. The Court finds that in view of the importance of the leased space to the Debtors' business operations, a 90-day extension of the Assumption/Rejection Deadline is appropriate. The Assumption and Rejection Deadline is extended to and including March 29, 2019. This extension is without prejudice to the rights of the Debtors to seek further extensions with the consent of the affected lessors as contemplated by §365(d)(4)(B)(ii).

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

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

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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10:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

Adv#: 2:18-01324 Gonzalez v. Marquez et al

#9.00 HearingRE: [17] Motion for Default Judgment with Proof of Service Default Judgment Motion due by 01/25/2019. (Attachments: # 1 Part 2 # 2 Part 3 # 3 Part 4) (Chung, Toan)

Docket 17

Tentative Ruling:

1/15/2019

For the reasons set forth below, the Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Default Judgment Against Defendants Victor Marquez and David Marquez [Doc. No. 17] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Guillermo Alvarado (the "Debtor") commenced a voluntary Chapter 7 petition on June 15, 2016 (the "Petition Date"). On October 18, 2018, the Chapter 7 Trustee (the "Trustee") commenced this action to avoid a postpetition transfer of property located at 16923 Royal Pines Lane, Canyon Country, CA 91387 (the "Property") from the Debtor to Victor Marquez and David Marquez (collectively, the "Defendants"). Doc. No. 1. On November 27, 2018, the Clerk of the Court entered Defendants' default. Doc. Nos. 13–14. The Trustee now seeks entry of default judgment against the Defendants. No opposition to the Motion is on file.

A hearing on the Debtor's motion to compel the Trustee to abandon the Property to the Debtor is set for January 23, 2019, at 10:00 a.m.

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992).

The following facts have been established by the well-pleaded allegations of the Complaint. Debtor commenced a voluntary Chapter 7 petition on June 15, 2016. The

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Chapter 7

Property was among the assets of the estate. On September 13, 2017—subsequent to the Petition Date—Debtor executed a Grant Deed transferring the Property to Defendants for no consideration (the “Marquez Deed”). Motion at Ex. 4. The Marquez Deed was recorded on December 22, 2017. *Id.*

Section 549(a) allows the Trustee to “avoid a transfer of property of the estate that occurs after the commencement of the case; and ... that is not authorized under this title or by the court.” The execution and recordation of the Marquez Deed was not authorized by the Court and is not authorized under any provision of Title 11. Consequently, pursuant to § 549(a) the Trustee is entitled to a judgment avoiding the transfer that was effected by the Marquez Deed.

With respect to any avoided transfer, § 550 provides that “the trustee may recover, for the benefit of the estate, the property transferred, or ... the value of such property” Section 551 provides that any avoided transfer “is preserved for the benefit of the estate” Pursuant to § 550, the Trustee is entitled to a judgment for the recovery of the Property, or its value, from the Defendants. Pursuant to § 551, the Trustee is entitled to a judgment that the Marquez Deed shall be preserved for the benefit of the estate.

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, the Trustee shall submit (1) a proposed order granting the Motion, which shall incorporate this tentative ruling by reference, and (2) a proposed judgment. (For purposes of the separate document rule, set forth in Civil Rule 58(a), both an order and a judgment must be submitted.)

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

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Defendant(s):

Victor Marquez

Pro Se

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

Wednesday, January 16, 2019

Hearing Room 1568

10:00 AM

CONT... Guillermo Alvarado

Chapter 7

David Marquez

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Toan B Chung

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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

Wednesday, January 16, 2019

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#10.00 Hearing re [29] *Stipulation Resolving Proof of Claim*

Docket 0

Tentative Ruling:

1/15/2019

For the reasons set forth below, the Stipulation is DISAPPROVED.

Pleadings Filed and Reviewed

1. Stipulation Resolving Proof of Claim [Doc. No. 29] (the "Stipulation")
2. Trustee's Opposition to 'Stipulation Resolving Proof of Claim' Filed as Document # 29 in the Bankruptcy Case and Request for Hearing on Same [Doc. No. 31] (the "Opposition")
3. Order Setting Hearing on Approval of Stipulation Resolving Proof of Claim [Doc. No. 32] (the "Order Setting Hearing")
4. Proof of Claim No. 2, filed by Deutsche Bank National Trust Company, as Certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 (the "Deutsche Claim")
5. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Felix Anibal Diaz and Cecilia Giron Diaz (the "Debtors") filed this voluntary chapter 7 case on July 6, 2018 (the "Petition Date"). On August 28, 2018, Deutsche Bank National Trust Company, as Certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 filed Proof of Claim No. 2 (the "Deutsche Claim") asserting an unsecured claim of \$179,084.07 for "Money Loaned" in connection with real property located at 16470 Tulip Court, Fontana, CA 92335 (the "Property").

On December 20, 2018, the Debtors and Deutsche (the "Parties") filed a *Stipulation Resolving Proof of Claim* [Doc. No. 29] (the "Stipulation"). As set forth in the Stipulation, the Debtors agreed to pay \$30,000 to Deutsche in full satisfaction of the Deutsche Claim and in exchange for Deutsche's agreement to dismiss an action pending

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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 16, 2019

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10:00 AM

CONT... Felix Anibal Diaz and Cecilia Giron Diaz Chapter 7

in state court that Deutsche initiated against the Debtors pre-petition (CIVDS17017).

On December 27, 2018, the Chapter 7 Trustee (the "Trustee") filed his *Trustee's Opposition to 'Stipulation Resolving Proof of Claim' Filed as Document # 29 in the Bankruptcy Case and Request for Hearing on Same* [Doc. No. 32] (the "Opposition). The Trustee states that the Deutsche Claim is based upon a pre-petition foreclosure of the Property and that the original note the Debtors signed was only for an \$80,000 loan at 10.5% annual interest (the "Note). The Trustee objects to the Stipulation on the grounds that it:

- (1) is only signed by the Parties' respective counsel and not by the Parties themselves,
- (2) through the Stipulation Deutsche seeks partial payment of the Note in violation of the automatic stay, and
- (3) to the extent the Stipulation can be viewed as a reaffirmation agreement, it
 - (a) does not contain the information required by § 524(k) and Fed. R. Bankr. P. 4008(b),
 - (b) is untimely under Fed. R. Bankr. P. 4008(a),
 - (c) violates LBR 4008-1, and
 - (d) does not comply with the certifications required by § 524(c).

The Trustee states that he attempted to contact Deutsche's counsel to discuss the Stipulation but did not receive a response prior to filing the Opposition. Therefore, the Trustee requests that the Stipulation be disapproved or, in the alternative, requests a hearing on the matter.

On December 28, 2018, the Court issued its *Order Setting Hearing on Approval of Stipulation Resolving Proof of Claim* [Doc. No. 32] (the "Order Setting Hearing"), pursuant to which the Court scheduled a hearing for January 16, 2019 at 10:00 a.m. to address the arguments raised by the Trustee in the Opposition. The Court also directed the Debtor and Deutsche to file a reply by no later than January 9, 2019.

As of the preparation of this tentative ruling, neither the Debtor nor Deutsche have filed a reply.

Therefore, the Stipulation is DISAPPROVED for failure to comply with this Court's Order Setting Hearing and for lack of prosecution.

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 16, 2019

Hearing Room 1568

10:00 AM

CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

The Trustee is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-20960 Juan F Avalos

Chapter 7

#1.00 Hearing

RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C1F7 0GH6 50188 .

fr: 11-19-18; 12-3-18

Docket 7

*** VACATED *** REASON: PER ORDER ENTERED 12/7/18

Tentative Ruling:

11/29/2018

Hearing required. This matter was continued from November 19, 2018 at 10:00 a.m. to allow time for Movant to confirm receipt of Debtor's purported cure payments. The parties are directed to appear (in person or telephonically) to update the Court on the status of Movant's review.

Party Information

Debtor(s):

Juan F Avalos

Represented By
Peter L Lago

Trustee(s):

Heide Kurtz (TR)

Pro Se

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:12-31372 First Regional Bancorp

Chapter 11

#2.00 Hearing RE [257] Post-Confirmation Status Conference

FR. 5-23-14; 4-10-14; 10-22-14; 4-22-15; 6-16-15; 1-6-16; 7-13-16; 12-7-16;
6-6-17; 9-12-17; 3-14-18; 6-12-18; 9-12-18

Docket 0

Tentative Ruling:

1/17/2019

Appearances required. This is a post-confirmation status conference. In previous status reports, the Liquidating Trustee has indicated that he is undertaking efforts to wind-up this estate. Counsel for the Liquidating Trustee is directed to appear to provide this Court with an update.

9/11/2018

Appearances are required.

Pleadings Filed and Reviewed

- Tenth Post-Confirmation Status Report ("Status Report") [Doc. No. 508]

This is a post-confirmation status conference. On March 9, 2018, Vikaran Ghei and Michael Zaitzeff (the "Liquidating Trustees") filed their "Ninth Post-Confirmation Status Report" (the "9th Status Report") [Doc. No. 499]. In that status report, the Liquidating Trustees informed this Court that on November 20, 2017, the Ninth Circuit denied their appeal involving their claim to a \$22,000,000 refund of federal income taxes from the Federal Deposit Insurance Corporation, in its capacity as receiver for the Debtor's bank subsidiary [*Id.* 3:10]. Based on that denial, the Liquidating Trustees stated that they would "shortly wind up the Bankruptcy Case"

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Los Angeles
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... First Regional Bancorp
[*Id.* 3:11].

Chapter 11

On August 30, 2018, the Liquidating Trustees filed their "Tenth Post-Confirmation Status Report" (the "10th Status Report") [Doc. No. 508]. Based on this Court's review, the 10th Status Report appears to be virtually identical to the 9th Status Report. The 10th Status Report provides no further detail on the Liquidating Trustee's efforts to wind up this bankruptcy case since the filing of the 9th Status Report nearly six months ago.

Based on the foregoing, counsel for the Liquidating Trustees is directed to appear to provide this Court with an update on any efforts being undertaken to wind up this bankruptcy

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-23958 Peter Barajas and Maria Guadalupe Castillo

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 BMW X5; VIN: 5UXZV4C5XD0B14229 .

Docket 8

Tentative Ruling:

1/17/2019

Tentative Ruling:

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

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

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

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

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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... Peter Barajas and Maria Guadalupe Castillo

Chapter 7

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

Party Information

Debtor(s):

Peter Barajas

Represented By
D Justin Harelik

Joint Debtor(s):

Maria Guadalupe Castillo

Represented By
D Justin Harelik

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-23870 Jesus Emanuel Garcia

Chapter 7

#4.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Toyota Corolla .

Docket 7

Tentative Ruling:

1/17/2019

Tentative Ruling:

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

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

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

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

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

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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... Jesus Emanuel Garcia Chapter 7

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

Party Information

Debtor(s):

Jesus Emanuel Garcia

Represented By
Lauren M Foley

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-23965 Brian Rios

Chapter 7

#5.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Dodge Charger, VIN: 2C3CDXCT6JH142564 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

1/17/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention not to assume the lease of the vehicle with Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... Brian Rios

Chapter 7

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

Party Information

Debtor(s):

Brian Rios

Represented By
Nicholas M Wajda

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:12-22639 Claire Levine

Chapter 7

#6.00 HearingRE: [665] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3800 Wailea Alanui Drive #B101, Kihei, Hawaii 96753 with proof of service. (Yabes, Gilbert)

Docket 665

Tentative Ruling:

1/17/2019

To provide U.S. Bank an opportunity to submit additional evidence establishing that it is the real party in interest entitled to enforce the Note and Deed of Trust, the Court will hold a continued hearing on the Motion on **February 19, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 665] (the "Motion")
- 2) Opposition to Motion for Relief from Stay of U.S. Bank, N.A. as to Real Property Located at 3800 Wailea Alanui Drive #B-101, Kihei, HI 96753 [Doc. No. 667] (the "Opposition")
 - a) Request for Judicial Notice in Opposition to Motion for Relief from Stay of U.S. Bank, N.A. as to Real Property Located at 3800 Wailea Alanui Drive #B-101, Kihei, HI 96753 [Doc. No. 668]
- 3) Notice of Trustee's Intention to Abandon Real Property of the Estate Pursuant to 11 U.S.C. § 554(a), Fed. Rule Bankr. Proc. 2002(c) and Local Bankruptcy Rule 6007-1 [Doc. No. 669]
- 4) Notice of Withdrawal of Notice of Trustee's Intention to Abandon Real Property of the Estate [Doc. No. 670]

I. Facts and Summary of Pleadings

U.S. Bank National Association, not in its individual capacity but solely as Trustee for the RMAC Trust, Series 2016-CTT ("U.S. Bank") moves for relief from the automatic stay with respect to property located at 3800 Wailea Alanui Drive, #B101, Kihei, Hawaii 96753 (the "Property"). Claire Levine (the "Debtor") and unsecured creditor Peter Rudinkas (collectively, the "Objectors") oppose the Motion.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... Claire Levine

Chapter 7

A. Background

Debtor commenced a voluntary Chapter 11 petition on April 10, 2012. Doc. No. 1. The case was converted to Chapter 7 on July 30, 2012. Doc. No. 78. Prior to conversion, the Hon. Sandra R. Klein presided over the case. Upon conversion to Chapter 7 the case was reassigned to the undersigned Judge.

On October 31, 2012, the Court denied Capital One, N.A.'s motion for stay-relief with respect to the Property as to the bankruptcy estate, without prejudice. Doc. No. 129. On February 6, 2014, the Court denied Capital One's renewed motion for stay-relief. Doc. Nos. 270 and 272.

On January 11, 2019, the Chapter 7 Trustee (the "Trustee") filed a notice stating that he intended to abandon the Property. Doc. No. 669 (the "Notice of Abandonment"). On January 14, 2019, the Trustee withdrew the Notice of Abandonment. Doc. No. 670.

B. Summary of Papers Filed in Connection with the Motion

U.S. Bank seeks stay-relief pursuant to §§ 362(d)(1) and (d)(2). Based upon a broker's price opinion, U.S. Bank asserts that the Property's value is \$6.1 million. U.S. Bank states that it is owed \$8,356,015.15.

The Objectors contend that U.S. Bank has failed to show that it has standing to enforce the security interest, for the following reasons:

- 1) The lender designated on the Note attached to the Motion is Americorp Funding. The Motion includes no evidence indicating that the Note was assigned to U.S. Bank.
- 2) In two prior stay-relief motions, a different party, Capital One, represented that it was the assignee of the Note from Americorp Funding. The Motion omits any evidence showing transfer of the Note between Americorp Funding and Capital One. This is an additional defect in the Note's chain of title.

The Objectors also challenge U.S. Bank's assertion that it is owed in excess of \$8 million. Debtor testifies that she has not received monthly payment statements from U.S. Bank, notwithstanding U.S. Bank's representation that it has sent such statements. According to Objectors, Debtor's non-receipt of monthly statements casts doubt upon U.S. Bank's representations as to the amount of the indebtedness.

U.S. Bank has not filed a Reply to the Opposition. The Trustee has not objected to the Motion.

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

CONT... Claire Levine

Chapter 7

II. Findings and Conclusions

Civil Rule 17(a)(1) provides: "An action must be prosecuted in the name of the real party in interest." "The modern function of the rule ... is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as *res judicata*." *U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1039 (9th Cir. 1986). "Real party in interest doctrine ... ensures that the party bringing the action owns or has rights that can be vindicated by proving the elements of the claim for relief asserted." *Veal v. Am. Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 908 (B.A.P. 9th Cir. 2011). Because stay-relief proceedings "are primarily procedural" and do not finally determine a creditor's claim or security, "a party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." *Veal*, 450 B.R. at 914–15.

Here, U.S. Bank has failed to establish that it is the real party in interest entitled to enforce the Note or Deed of Trust. The lender designated on the Note is Americorp Funding, a Partnership ("Americorp"). The Deed of Trust likewise provides that Americorp is the secured lender. U.S. Bank has not supplied any documentation establishing that it acquired the Note or Deed of Trust from Americorp.

In support of the Motion, U.S. Bank submits a declaration from Michael P. Ruiz, an employee of Rushmore Loan Management Services, LLC ("RLMS"). According to Mr. Ruiz's declaration, RLMS has the contractual right to service the Note on behalf of U.S. Bank. Ruiz Decl. at ¶2. Mr. Ruiz testifies that RLMS' records reflect that U.S. Bank holds possession of the Note. *Id.* at ¶6. The records alluded to by Mr. Ruiz are not included as exhibits to his declaration.

Notwithstanding Mr. Ruiz's testimony that U.S. Bank holds possession of the Note, the Court finds that U.S. Bank is required to supply additional evidence to establish its standing. In two prior stay-relief motions, a different entity, Capital One, asserted that it was entitled to enforce the Note. The stay-relief motion filed by Capital One on December 2, 2013 [Doc. No. 248] included documentation evidencing assignment of the Note from Americorp to Mortgage Electronic Registration Systems, Inc. ("MERS"), followed by assignment of the Note from MERS to Capital One. U.S. Bank has not supplied documentation showing that it acquired the right to enforce the Note from Capital One. Given that Capital One has asserted rights in the Note before this Court on two prior occasions, U.S. Bank must supply documentation to establish that it holds a colorable claim against the Property.

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... Claire Levine

Chapter 7

To provide U.S. Bank an opportunity to supply documentation establishing that it is the real party in interest, the Court will hold a continued hearing on the Motion on **February 19, 2019**. U.S. Bank shall submit additional evidence supporting its entitlement to enforce the Note and Deed of Trust by no later than **February 5, 2019**. Any opposition to such additional evidence is due by **February 12, 2019**. U.S. Bank's reply to such opposition is due by **February 15, 2019**.

The Court finds it important to emphasize that although U.S. Bank has not at this stage carried its evidentiary burden, the heightened evidentiary standards advocated by the Objectors are not appropriate in the context of a lift-stay motion. "Hearings on relief from the automatic stay are ... handled in a summary fashion," *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), and U.S. Bank is required only to show that it has a "colorable claim" against the Property, *Veal*, 450 B.R. at 914-15. The Objectors' request that the Court conduct an evidentiary hearing at which U.S. Bank is required to produce original copies of the Note and Deed of Trust for inspection is DENIED as unnecessary.

The Court will prepare and enter an order setting the continued hearing.

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

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E McGoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)

**United States Bankruptcy Court
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10:00 AM

CONT... Claire Levine

Chapter 7

Daniel A Lev
Asa S Hami
Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-22052 Jonathan Bautista Reyes

Chapter 7

#7.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C4B0 0GH3 07889 .

Docket 10

Tentative Ruling:

1/17/2019

Tentative Ruling:

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

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

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

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

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10:00 AM

CONT... Jonathan Bautista Reyes

Chapter 7

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

Party Information

Debtor(s):

Jonathan Bautista Reyes

Represented By
Carlo Reyes

Trustee(s):

Timothy Yoo (TR)

Pro Se

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

Tuesday, January 22, 2019

Hearing Room 1568

10:00 AM

2:18-21723 Los Angeles Training Center LLC

Chapter 11

#8.00 Hearing

RE: [22] Motion for Relief from Stay Notice of Motion For Relief From Automatic Stay and Memorandum of Points and Authorities In Support of Brentwood Gateway LLC's Motion for Relief From Automatic Stay.

Docket 22

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 1-17-19

Tentative Ruling:

1/17/2019

For the reasons set forth herein, the Motion is DENIED without prejudice.

First, pursuant to Local Bankruptcy Rule ("LBR") 4001-1(b)(1), "[a]n entity seeking relief from the automatic stay ... must file a motion using the court-mandated F 4001-1 series of form motions. The failure to use the mandatory forms may result in the denial of the motion or the imposition of sanctions."

Movant failed to comply with LBR 4001-1(b)(1) by failing to use the court-mandated form.

Second, on October 16, 2018, this Court issued a *Notice of Joint Administration of Cases and Requirements for Filing Documents* [Doc. No. 10] (the "Notice"). Pursuant to the Notice, Movant was required to (1) use the joint-administration caption; (2) indicate, by checking appropriate boxes, the debtor or debtors affected by the filed document; and (3) file the motion in the lead case, which in this case is *In re F.A.S.S.T., LLC*, Case No. 2:18-bk-21828-ER. [Note 1]

Movant did not comply with any of the foregoing requirements.

Third, Movant's proof of service does not reflect that the Motion was served on the Debtor as required by LBR 4001-1(c)(1)(C)(i), or on the 20 largest creditors as required by Rules 4001(a)(1) and 1007(d) of the Federal Rules of Bankruptcy Procedure ("FRBP"). The Court notes that Movant's failure to serve the Debtor appears to be harmless in light of the Debtor's submission of a timely opposition [Doc. No. 25]. Nevertheless, Movant is cautioned that failure to comply with LBR's,

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CONT... Los Angeles Training Center LLC

Chapter 11

the F.R.Civ.P. or the FRBP, or with any order of the court may be grounds for the imposition of sanctions, including, but not limited to, this Court striking pleadings or denying future requests for relief. *See* LBR 1002-1(f).

Movant may refile an amended motion that cures the deficiencies outlined above and complies with applicable local and federal rules.

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

Note 1: The Court also takes note that Debtor's counsel failed to comply with these requirements as well [*See* Doc. No. 25]. Additionally, Debtor filed its opposition in the *Los Angeles Training Center LLC* case [2:18-bk-21723-ER], but incorrectly used the caption and case number of F.A.S.S.T., LLC. Debtor's counsel is cautioned that failure to comply with the Notice in the future may result in this Court striking the non-compliant pleadings.

Party Information

Debtor(s):

Los Angeles Training Center LLC

Represented By
Robert M Yaspan

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10:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

#1.00 Hearing
RE: [128] Motion to Abandon Debtor's Principal Residence:Supporting
Memorandum & Declarations. Giovanni)

Docket 128

Tentative Ruling:

1/22/2019

The Court is prepared to deny the Motion on a ground not raised by the parties. To provide the parties an opportunity to respond to the Court's findings, a continued hearing on the Motion shall take place on **February 13, 2019, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtors' Principal Residence [Doc. No. 128] (the "Second Abandonment Motion")
 - a) Declaration of Norma Balboa Regarding Service [Doc. No. 129]
 - b) Notice of Hearing on Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtor's Principal Residence [Doc. No. 131]
- 2) Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 130] (the "Opposition")
 - a) Declaration of Trustee's Counsel in Support of Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 134]
- 3) Reply to Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 133]

I. Facts and Summary of Pleadings

A. Procedural Background

Guillermo Alvarado (the "Debtor") commenced a voluntary Chapter 7 petition on June 15, 2016. Doc. No. 1. On August 8, 2018, the Debtor filed a motion seeking to compel the Chapter 7 Trustee (the "Trustee") to abandon the Debtor's principal residence, located at 16923 Royal Pines Lane, Canyon Country, CA 91387 (the

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“Property”). Doc. No. 106 (the “First Abandonment Motion”). On September 6, 2018, the Court denied the First Abandonment Motion, without prejudice, based upon the Debtor’s failure to properly set the motion for hearing. Doc. No. 117 (the “Denial Order”). Shortly after issuance of the Denial Order, the Debtor filed a *Notice of Hearing on Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtor’s Principal Residence* [Doc. No. 118] (the “Purported Notice”), but did not re-file the First Abandonment Motion. On September 10, 2018, the Court issued an order striking the Purported Notice from the record. Doc. No. 121 (the “Order Striking Purported Notice”). The Court found that the filing of the Purported Notice was procedurally improper for the following reasons:

Pursuant to the Denial Order, the Motion has been denied without prejudice.

As a result, the Debtor is required to file a new motion, and pay the required filing fee, if he wishes to obtain a hearing upon the relief requested. A Motion that has been denied cannot be resuscitated by the filing of a document such as the Purported Notice.

Order Striking Purported Notice at ¶1.

On December 18, 2018, the Debtor filed a second motion seeking to compel the Trustee to abandon the Property. Doc. No. 128 (the “Second Abandonment Motion”). The Trustee objects to the Second Abandonment Motion.

B. The Trustee’s Related Avoidance Action

On October 18, 2018, the Trustee commenced an action to avoid the post-petition transfer of the Property from the Debtor to Victor Marquez and David Marquez. On January 17, 2019, the Court entered default judgment and avoided the transfer. Adv. Doc. No. 23 (the “Marquez Judgment”). Among other things, the Court ordered that the Grant Deed transferring the Property from the Debtor to Victor and David Marquez (the “Marquez Grant Deed”) “is automatically preserved for the benefit of the estate pursuant to 11 U.S.C. § 551 ahead of the Debtor’s claimed homestead exemption.” Marquez Judgment at 2.

C. Summary of Papers Filed in Connection with the Second Abandonment Motion

By the Second Abandonment Motion, the Debtor seeks an order compelling the Trustee to abandon the Property. The Trustee opposes the Motion. The Debtor and the Trustee dispute whether there is any equity in the Property to be administered for the benefit of creditors.

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The gravamen of the dispute is whether the Property is encumbered by a Deed of Trust in favor of Victor Marquez (the “Marquez Deed of Trust”). The Marquez Deed of Trust is different from the Marquez Grant Deed avoided by the Trustee. According to the Debtor, the Marquez Deed of Trust was recorded on October 22, 2015, for the purpose of securing a \$250,000 loan that Victor Marquez made to the Debtor on October 15, 2015. A copy of the Marquez Deed of Trust is attached as an exhibit to the Second Abandonment Motion. Doc. No. 128 at Ex. 4.

The Trustee disputes the existence of the Marquez Deed of Trust. The Trustee points to a title report, prepared by Priority Title, which did not identify the Marquez Deed of Trust as an encumbrance against the Property.

II. Findings and Conclusions

As a preliminary matter, the Court first addresses a procedural irregularity regarding the manner in which the Second Abandonment Motion has been briefed. The Trustee’s Opposition to the Motion contained no argument with respect to the existence of the Marquez Deed of Trust. The Trustee’s contention that the Marquez Deed of Trust does not encumber the Property was first raised two days subsequent to the filing of the Debtors’ Reply, in a document captioned *Declaration of Trustee’s Counsel in Support of Trustee’s Opposition to Debtor’s Second Motion to Compel Abandonment of Real Property* [Doc. No. 134] (the “Declaration”). Because the Declaration was not filed concurrently with the Trustee’s Opposition and raises new arguments in response to the Reply, the Court construes the Declaration as an unauthorized Sur-Reply.

The Debtor has not had an opportunity to respond to the Trustee’s challenge to the existence of the Marquez Deed of Trust. For this reason, the Court does not consider the Trustee’s arguments regarding the validity of the Marquez Deed of Trust. However, as more fully explained below, the Court is prepared to find that regardless of the validity of the Marquez Deed of Trust, denial of the Second Abandonment Motion is appropriate because there is equity in the Property that the Trustee can administer for the benefit of creditors. Because this finding is based upon a ground not raised by the Trustee, the Court will hold a continued hearing on the Second Abandonment Motion to provide the Debtor an opportunity respond.

Assuming without deciding that the Marquez Deed of Trust was recorded against the Property on October 22, 2015, the Court is prepared to find that as a result of subsequent events, the Marquez Deed of Trust no longer encumbers the Property. The reason is that on September 13, 2017, the Debtor transferred the Property to Victor

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and David Marquez by way of the Marquez Grant Deed. Under the doctrine of merger, whenever the same person holds a greater and lesser estate in the same parcel of real property, the lesser estate merges into the greater and is extinguished. *Kolodge v. Boyd*, 88 Cal. App. 4th 349 (2001). Subsequent to the transfer effectuated by the Marquez Grant Deed, Victor Marquez obtained a fee simple interest in the Property (with David Marquez holding an interest as a joint tenant). Victor Marquez's lesser interest (the security interest established by the Marquez Deed of Trust) merged with his greater interest (the fee simple interest resulting from the Marquez Grant Deed), and the lesser interest ceased to exist. Consequently, when the Trustee subsequently avoided the transfer effectuated by the Marquez Grant Deed, the Property was no longer encumbered by the Marquez Deed of Trust, which had been extinguished under the doctrine of merger.

The Debtor asserts that the Property is worth \$930,000; the Trustee contends that the Property is worth in excess of \$989,000. The Property is encumbered by a Deed of Trust in favor of Wells Fargo in the approximate amount of \$676,000. Even under the Debtor's lower valuation, the Property has equity that the Trustee can administer for the benefit of creditors if it is not encumbered by the Marquez Deed of Trust.

A continued hearing on the Second Abandonment Motion shall be held on **February 13, 2019, at 10:00 a.m.** The Debtor and the Trustee shall submit briefs responding to the preliminary findings of the Court set forth herein by no later than **February 6, 2019**. The briefs shall also address whether the Marquez Deed of Trust encumbers the Property if the Court determines that it was not extinguished under the doctrine of merger. That is, was the Marquez Deed of Trust validly recorded on October 15, 2015, and do the records of the Los Angeles County Recorder continue to reflect the Marquez Deed of Trust as an encumbrance against the Property? (It is possible that a title report, such as that obtained by the Trustee, may not detect all encumbrances.) Absent further order of the Court, no further briefing on the Second Abandonment Motion will be accepted.

The Court will prepare and enter an order setting the continued hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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Hearing Room 1568

10:00 AM

2:16-19483 Laura Denise Banuelos and Michael Angelo Banuelos

Chapter 7

#2.00 HearingRE: [68] Motion to Disallow Claims - Amended Objection to Claim 9-1 of Joseph Yeh; Memo of Points and Authorities; and Declaration of Travis Terry in Support Thereof (with proof of service) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 9-1) (Sarenas, Lovee)

Docket 68

Tentative Ruling:

1/22/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 9 is reclassified as a general unsecured claim in the amount of \$1,148.64.

Pleadings Filed and Reviewed

1. Amended Objection to Claim 9-1 of Joseph Yeh [Doc. No. 68] (the "Claim Objection")
2. Amended Notice of Objection to Claim [Doc. No. 69]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Laura and Michael Banuelos (the "Debtors") filed this voluntary chapter 7 case on July 18, 2016 (the "Petition Date"). The deadline to file timely proofs of claim was April 17, 2017.

On February 8, 2017, Joseph Yeh ("Claimant") filed Proof of Claim Number 9-1 ("Claim 9") asserting a priority unsecured claim of \$1,148.64 pursuant to § 507(a)(4) for "services performed." In support of Claim 9, Claimant attached copies of a handwritten note that states "Joseph, please hold onto both checks until we have the long. Leo will let you know. Thank you, Laura," and two checks from Newtech Resources, Inc. ("Newtech") to Mr. Yeh, totaling \$1,148.64. One of the checks, dated January 1, 2016 (Check No. 1051), is for the sum of \$765.76 and the memo line states "12/19/15 - 1/1/16" ("Check One"). The other check, dated January 18, 2016 (Check No. 1052), is difficult to read, but appears to be for the sum of \$382.88 and the memo

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line states "1-2 – 1/16" ("Check Two," and together with Check One, the "Checks").

The chapter 7 trustee, Peter Mastan (the "Trustee"), acting through counsel objects to Claim 9 on the basis that the claim is improperly classified as a priority wage claim under § 507(a). First, the Trustee asserts that Mr. Yeh has not provided evidence to show that his debt arises from wages, as is required by § 507(a)(4), because the Checks do not explicitly state that they were for the payment of Mr. Yeh's wages and Mr. Yeh has not shown that the debt is personally owed by the Debtors, rather than Newtech.

Second, the Trustee states that in order to qualify as a priority claim under § 507(a)(4), the services must have been performed within six months prior to the Petition Date, but notes that the Checks were not written during the requisite priority period and do not indicate that they were for services performed within the priority period. Therefore, the Trustee argues that even if the Checks were for the payment of wages, Mr. Yeh has not demonstrated that he is entitled to a priority claim under § 507(a)(4).

The Trustee states that he reached out to Mr. Yeh on at least three occasions to request that Mr. Yeh amend or withdraw his proof of claim for the reasons stated above but has not received any response. Accordingly, the Trustee requests that the Court enter an order sustaining the Claim Objection and reclassifying Claim 9 as a general unsecured claim.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over

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a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the prima facie validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299–301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.*

The Court finds that Claim 9 was filed in accordance with Bankruptcy Rule 3001 and is therefore entitled to a *prima facie* presumption of validity. However, the Trustee has satisfied his burden of overcoming that presumption by filing an objection asserting that the evidence does not support a finding that the alleged debt qualifies as a priority claim under § 507(a)(4).

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim.

As the Trustee highlights, Mr. Yeh has not responded with evidence establishing that his debt arises from wages, salaries or commissions. Additionally, by this Court's calculation, 180-days prior to the Petition Date is January 20, 2016. However, the Checks purport to be payment for services performed during "12/19/15 – 1/1/16" and "1-2[-16] – 1/16[16]." Therefore, the dates listed on the memo lines on the Checks indicate that the services were performed earlier than January 20, 2016, and do not qualify for priority treatment under § 507(a)(4).

Additionally, pursuant to LBR 9013-1(h), LBR 3007-1(b)(3)(B), and LBR 3007-1(b)(6), the Court treats Claimant's failure to file a response to the Claim Objection as consent to granting the relief the Trustee seeks.

III. Conclusion

For the reasons set forth above, the Claim Objection is SUSTAINED and Claim 9

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is reclassified as a general unsecured claim in the amount of \$1,148.64.

The Trustee is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Party Information

Debtor(s):

Laura Denise Banuelos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Michael Angelo Banuelos

Represented By
Jeffrey B Smith

Trustee(s):

Peter J Mastan (TR)

Represented By
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
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Wednesday, January 23, 2019

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2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#3.00 Hearing
RE: [31] Motion For partial Summary Judgment

Docket 31

Tentative Ruling:

1/22/2019

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Partial Summary Judgment [Doc. No. 31] (the "Motion")
- 2) Limited Opposition to Motion for Partial Summary Judgment [Doc. No. 36]
- 3) Reply in Support of Partial Motion for Summary Judgment [Doc. No. 39]

I. Facts and Summary of Pleadings

Plaintiff has obtained final judgment in the State Court (the "State Court Judgment") against Defendant, awarding Plaintiff damages of \$225,000 for sexual battery (Cal. Civ. Code § 1798.5), gender violence (Cal. Civ. Code § 52.4), and violation of the Ralph Civil Rights Act (Cal. Civ. Code § 57.7). The portion of the State Court Judgment awarding Plaintiff attorneys' fees in the amount of approximately \$2.5 million is not yet final. However, the State Court Judgment's award of costs in the amount of \$84,090.34 is final.

Plaintiff seeks partial summary adjudication with respect to her claim that the portion of the State Court Judgment that is final is excepted from Defendant's discharge, pursuant to § 523(a)(6). Plaintiff asserts that Defendant is precluded from contesting the dischargeability of the indebtedness established by the State Court Judgment.

Defendant does not contest the non-dischargeability of the aspects of the State Court Judgment that are final (the award of damages of \$225,000 and costs of \$84,090.34). However, Defendant reserves all rights regarding the dischargeability of any award of attorneys' fees.

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Plaintiff asserts that in the event the award of attorneys' fees becomes final, such fees will also be non-dischargeable. Plaintiff requests that if and when the award of attorneys' fees becomes final, she be permitted to commence collection efforts.

II. Findings and Conclusions

A. The Court Does Not Rule on the Dischargeability of the Award of Attorneys' Fees

It is not proper for the Court to decide, at this time, whether any attorneys' fees that may be awarded to Plaintiff are non-dischargeable. First, the Motion sought partial summary adjudication only with respect to the aspects of the State Court Judgment that are now final (the award of damages and costs). To rule upon the dischargeability of the attorneys' fees would go beyond the scope of the relief requested in the Motion and would violate Defendant's due process rights.

Second, the pending appeal of the award of attorneys' fees means that under California law, the fee aspect of the State Court Judgment is not final for issue preclusion purposes. *See Franklin & Franklin v. 7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1168, 1174, 102 Cal. Rptr. 2d 770, 774 (2000) ("Unlike the federal rule and that of several states, in California the rule is that the finality required to invoke the preclusive bar of res judicata is not achieved until an appeal from the trial court judgment has been exhausted or the time to appeal has expired."). Because issue preclusion applies only in the context of a final judgment, it would be premature for the Court to find that Defendant is precluded from contesting the dischargeability of the fee aspect of the State Court Judgment.

B. Defendant is Precluded from Contesting the Dischargeability of the Aspects of the State Court Judgment that are Final

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th

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Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

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

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

1. The Five Elements Supporting Issue Preclusion Are Satisfied

Element 1: The Issues Are Identical

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a

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subjective belief that harm is substantially certain.’ The injury must be deliberate or intentional, ‘not merely a deliberate or intentional act that leads to injury.’” *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves ‘(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.’” *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

Here, the State Court Judgment in favor of Plaintiff finds that Defendant committed sexual battery, committed gender violence, and violated the Ralph Civil Rights Act (the "Ralph Act"). The State Court provided the jury the following instructions regarding Plaintiff’s sexual battery cause of action:

[Plaintiff] Ms. Campos claims that [Defendant] Dr. Kennedy committed a sexual battery. To establish this claim, Ms. Campos must prove the following:

- 1) That Dr. Kennedy intended to cause a harmful or offensive contact with Ms. Campos’s vagina, buttocks or breast, and a sexually offensive contact with Ms. Campos resulted, either directly or indirectly; and
- 2) That Ms. Campos did not consent to the touching; and
- 3) That Ms. Campos was harmed or offended by Dr. Kennedy’s conduct.

"Offensive contact" means contact that offends a reasonable sense of personal dignity.

The State Court provided the jury the following instructions regarding Plaintiff’s gender violence cause of action:

[Plaintiff] Ms. Campos claims that [Defendant] Dr. Kennedy committed an act of gender violence against her. Gender violence is a form of sex discrimination.

To establish this claim, Ms. Campos must prove either of the following:

- (1) That Dr. Kennedy committed a battery against Ms. Campos in part based on the gender of Ms. Campos.

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(2) That Dr. Kennedy's conduct on April 10, 2013, constituted a physical intrusion or physical invasion of a sexual nature under coercive conditions.

The State Court provided the jury the following instructions regarding Plaintiff's cause of action under the Ralph Act:

[Plaintiff] Ms. Campos claims that [Defendant] Dr. Kennedy committed an act of violence against her because of her sex. To establish this claim, Ms. Campos must prove all of the following:

- 1) That Dr. Kennedy committed a violent act against Ms. Campos;
- 2) That a substantial motivating reason for Dr. Kennedy's conduct was Ms. Campos's sex;
- 3) That Ms. Campos was harmed; and
- 4) That Dr. Kennedy's conduct was a substantial factor in causing Ms. Campos's harm.

As a result of the jury's findings that Defendant committed sexual battery, committed gender violence, and violated the Ralph Act, Defendant is precluded from contesting that he committed "willful and malicious" injury within the meaning of § 523(a)(6). The jury's findings establish that Defendant subjected Plaintiff to unwanted sexual contact; that Defendant did so deliberately; and that Plaintiff's gender was a substantial factor motivating Defendant's act of violence. This is precisely the type of "willful and malicious" injury that § 523(a)(6) was enacted to address.

Elements 2–3: The Issues Were Actually Litigated and Necessarily Decided

There is no dispute that the State Court Judgment was entered after a jury trial during which Defendant had the opportunity to defend himself. The Court finds that the issues were actually litigated and necessarily decided.

Element 4: The State Court Judgment is Final and on the Merits

There is no dispute that the portion of the State Court Judgment awarding costs and damages is final. Only the aspect of the judgment pertaining to attorneys' fees is subject to appeal. This element is satisfied.

Element 5: The Party Against Whom Preclusion is Sought is the Same as the Party to the State Court Proceeding

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There is no dispute that Dr. Kennedy, the Defendant in the State Court Action, is the same person who is the Defendant in this action.

2. Public Policy Supports Preclusion

Having found that all five elements supporting issue preclusion have been established, the Court must also find that public policy supports applying California preclusion law. Such a finding is appropriate here. Applying preclusion law preserves the integrity of the judicial system by giving full effect to judgments that have been obtained after both parties were afforded full opportunity to litigate the matter. Preclusion promotes judicial economy by obviating the need for a duplicative and unnecessary trial. The avoidance of an unnecessary trial promotes the public policy against vexatious litigation.

C. Plaintiff is Entitled to Final Judgment with Respect to the Non-Dischargeability of the State Court Judgment's Award of Damages and Costs

Pursuant to Civil Rule 52(b), the Court finds that there is no just reason to delay entry of final judgment with respect to the non-dischargeability of the State Court Judgment's award of damages and costs.

D. Future Proceedings

Adjudication of the dischargeability of the fee portion of the State Court Judgment will occur once that aspect of the judgment becomes final. A Status Conference shall take place on **May 14, 2019, at 10:00 a.m.** By no later than fourteen days prior to the hearing, the parties shall submit a Joint Status Report, which shall discuss the status of Defendant's appeal of the award of attorneys' fees.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. Within seven days of the hearing, Plaintiff shall submit a (1) proposed order granting the Motion and (2) a proposed judgment. (Pursuant to the separate document rule, set forth in Civil Rule 58, both a proposed order and a proposed judgment are required.)

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

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

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean
Jeffrey S Shinbrot

Trustee(s):

David M Goodrich (TR)

Pro Se

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

- #4.00** Show Cause Hearing
RE: [44] Order (1) Requiring Plaintiff To Show Cause Why This Action Should Not Be Dismissed For Failure To Prosecute

FR. 12-12-18

Docket 1

Tentative Ruling:

1/22/2019

For the reasons set forth below, the OSC is discharged and the Motion is DENIED in its entirety.

Pleadings Filed and Reviewed

1. Complaint to Determine Dischargeability of Debt [11 U.S.C. § 523(a)(4)] [Adv. Doc. No. 1] (the "Complaint")
2. Scheduling Order [Doc. No. 15]
3. Plaintiffs' Motion for Summary Judgment [Adv. Doc. No. 31] (the "MSJ" or "Motion")
 - a. Plaintiffs' Separate Statement of Uncontroverted Facts and Conclusions of Law in Support of Motion for Summary Judgment [Adv. Doc. No. 32]
 - b. Declaration of Fred Rosenberg in Support of Motion for Summary Judgment [Adv. Doc. No. 33]
 - c. Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment [Adv. Doc. No. 34] ("Plaintiffs' RFJN")
 - d. Notice of Hearing on Motion for Summary Judgment [Adv. Doc. No. 35]
4. Defendant's Separate Statement of Uncontroverted Facts and Conclusions of Law in Opposition to Motion for Summary Judgment [Adv. Doc. No. 38]

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- a. Defendant's Request for Judicial Notice in Opposition to Motion for Summary Judgment [Adv. Doc. No. 39]
- b. Declaration of Robert Carpenter in Opposition to Motion for Summary Judgment [Adv. Doc. No. 40]
5. October 2, 2018 Ruling [Doc. No. 41] (the "October 2, 2018 Ruling")
6. Declaration of Robert Carpenter in Opposition to Motion for Summary Judgment: Supplemental Brief [Doc. No. 42]
7. Supplemental Request for Judicial Notice in Opposition to Motion for Summary Judgment [Doc. No. 43]
8. Order (1) Requiring Plaintiff to Show Cause Why This Action Should Not be Dismissed for Failure to Prosecute and (2) Vacating November 6, 2018 Continued Hearing on Plaintiffs' Motion for Summary Judgment [Doc. No. 44] (the "OSC")
9. November 6, 2018 Ruling [Doc. No. 46] (the "November 6, 2018 Ruling")
10. Declaration of Robert Carpenter Re: (1) Order Requiring Plaintiff to Show Cause For Failure to Show Cause Why This Action Should Not be Dismissed for Failure to Prosecute and (2) Vacating November 6, 2018 Continued Hearing on Plaintiffs' Motion for Summary Judgment [Doc. No. 48]
11. Declaration of Leonard Pena Re: Court's Order to Show Cause [Doc. No. 49]
12. Order Continuing Hearing on Order to Show Cause From December 12, 2018, at 10:00 A.M. to January 23, 2019 at 10:00 A.M. [Doc. No. 50]
13. Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment [Doc. No. 52] (the "Supplemental Brief")
14. Declaration of Robert Carpenter in Opposition to Motion for Summary Judgment: Supplemental Brief [Doc. No. 53] (the "Supplemental Opposition")
15. Plaintiffs' Reply to Defendant's Opposition to Supplemental Brief in Support of Motion for Summary Judgment [Doc. No. 54] (the "Supplemental Reply")

I. Facts and Summary of Pleadings

This is a continued hearing on the Court's Order (1) Requiring Plaintiff to Show Cause Why This Action Should Not be Dismissed for Failure to Prosecute and (2) Vacating November 6, 2018 Continued Hearing on Plaintiffs' Motion for Summary Judgment [Doc. No. 44] (the "OSC"). In advance of an October 2, 2018 hearing on Fred Rosenberg ("Mr. Rosenberg") and Friendgiftr, Inc., a Delaware corporation's ("Friendgiftr," and together with Mr. Rosenberg, the "Plaintiffs") Motion for Summary Judgment against Defendant Robert Mark Carpenter ("Mr. Carpenter" or

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"Defendant," and together with the Plaintiffs, the "Parties") on their claim under 11 U.S.C. § 523(a)(4) (the "Motion"), this Court issued a tentative ruling detailing the procedural history of this case and providing a summary of relevant pleadings [Doc. No. 41] (the "October 2, 2018 Ruling").

As set forth in more detail in the October 2, 2018 Ruling, the Court continued the matter for further briefing on the issues of: (1) whether an express or statutory trust existed; and (2) whether Defendant was acting in a fiduciary capacity within the narrow meaning of § 523(a)(4).

On November 5, 2018, this Court entered an *Order (1) Requiring Plaintiff to Show Cause Why This Action Should Not be Dismissed for Failure to Prosecute and (2) Vacating November 6, 2018 Continued Hearing on Plaintiffs' Motion for Summary Judgment* [Doc. No. 44] (the "OSC") after finding that Plaintiffs had failed to timely file supplemental briefing by the date set forth in the October 2, 2018 Ruling. On November 28, 2018, Plaintiffs and Defendant submitted declarations responding to the Court's OSC [Doc. No. 48 and 49]. Based upon this Court's review of those pleadings, the Court entered an *Order Continuing Hearing on Order to Show Cause From December 12, 2018, at 10:00 A.M. to January 23, 2019 at 10:00 A.M.* [Doc. No. 50].

On January 2, 2019, Plaintiffs filed a timely supplemental brief [Doc. No. 52] (the "Supplemental Brief"). Plaintiffs make two additional arguments in support of their contention that an express trust existed within the meaning of § 523(a)(4). Plaintiffs argue for the first time that Delaware, rather than California, law applies in determining whether the requisite trust relationship existed and whether there was a fiduciary relationship between Plaintiffs and the Defendant within the meaning of § 523(a)(4). In support of this argument, Plaintiffs cite *Matter of Reading Co.*, 711 F.2d 509, 517 (3d. Cir. 1983), but do not include any further analysis or authority on this point.

Next, applying California law, Plaintiffs contend that an "Agreement" dated May 5, 2009 between the Parties created an express trust because it described the nature, extent and restrictions of Plaintiffs' investment [Supplemental Brief, Ex. 1] (the "Agreement"). Therefore, Plaintiffs conclude that by the terms of the Agreement, the Defendant had a fiduciary duty to protect the investment funds of Friendgiftr and use

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them only as described in the Agreement. Plaintiffs state that the LASC has already found that Defendant used the investment monies for expenses that were not authorized by the Agreement. Accordingly, Plaintiffs submit that they are entitled to summary adjudication on their § 523(a)(4) claim.

In the alternative, Plaintiffs request leave to amend their Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure to include a claim for embezzlement under § 523(a)(4). Plaintiffs state that their original attorney drafted the Complaint but, apparently believing Plaintiffs did not have a viable claim for embezzlement, did not include that claim in the Complaint. However, with the advice of new counsel, Plaintiffs now believe that the LASC's findings support a claim for embezzlement against the Defendant.

On January 8, 2019, Defendant filed a timely supplemental opposition [Doc. No. 53] (the "Supplemental Opposition"). Among other things, Defendant raises a number of issues with respect to the authenticity and validity of the Agreement (¶¶ 5, 6), the amount of damages Plaintiffs seek (¶ 7), contends that California law applies based on Defendant's assertion that Friendgift was a California corporation during his entire tenure (¶¶ 8-10), opposes Plaintiffs' request for leave to amend and denies Plaintiffs' assertion that he would be liable under a theory of embezzlement (¶12). Defendant also raises a number of arguments unrelated to the issues presently before this Court which the Court will not summarize.

On January 16, 2019, Plaintiffs filed a timely supplemental reply [Doc. No. 54] (the "Supplemental Reply"). Plaintiffs respond to Defendant's contention that Friendgift is a California corporation by attaching a Certificate of Merger reflecting a merger between the California corporation and the Delaware corporation on November 23, 2010. Supplemental Reply, Ex. 2. Plaintiffs reiterate their contention that because Friendgift is currently a Delaware corporation, the Court should look to Delaware corporate law in determining whether the Agreement created an express trust. Plaintiffs contend that Defendant's Supplemental Opposition does not deny that Defendant owed certain fiduciary duties or that the Agreement created an express trust. Therefore, Plaintiffs request that the Court grant their motion and enter judgment in their favor.

II. Findings of Fact and Conclusions of Law

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A. The OSC is Discharged

In view of Plaintiffs' timely submission of the Supplemental Briefing described above, the Court's Order to Show Cause [Doc. No. 44] is discharged.

B. Plaintiffs Have Not Established That An Express or Technical Trust Existed or That Defendant Was Acting in a Fiduciary Capacity Under Applicable Law

The Court's October 2, 2018 Ruling contains a summary of applicable law with respect to a motion for summary judgment and application of collateral estoppel and, accordingly, will not be repeated here.

Section 523(a)(4) excepts from discharge a debt "for fraud or defalcation while acting in a fiduciary capacity." 11 U.S.C. § 523(a)(4). To prevail on a nondischargeability claim under § 523(a)(4) the plaintiff must prove: "1) an express trust existed, 2) the debt was caused by fraud or defalcation, and 3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *Mele v. Mele (In re Mele)*, 501 B.R. 357, 363 (B.A.P. 9th Cir. 2013) (quoting *Otto v. Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997)). Plaintiff must show "not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation." *Honkanen v. Hopper (In re Honkanen)*, 446 B.R. 373, 378 (B.A.P. 9th Cir. 2011) (citations omitted).

"Although federal law governs the determination of whether a person or entity is a 'fiduciary,' courts considering dischargeability under § 523(a)(4) have looked to state law to evaluate the presence of a technical trust relationship barring the discharge of a debt under § 523(a)(4)." *Tri Supply & Equip., Inc. v. Brady (In re Brady)*, 458 B.R. 814, 820 (Bankr. D. Del. 2011); *see also Crowe v. Moran (In re Moran)*, 413 B.R. 168, 185 (Bankr. D. Del. 2009). As the Bankruptcy Court explained in *Moran*:

The qualification that the debtor be acting in a fiduciary capacity has consistently, since its appearance in the Act of 1841, been limited in its application to what may be described as technical or express trusts, and not to trusts *ex maleficio* that may be imposed because of the very act

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of wrongdoing out of which the contested debt arose. Thus, an exception to discharge cannot be based upon a constructive or implied trust. *The Trust must have existed prior to the wrongdoing from which the debt arose.*

Although federal law governs the determination of whether a person or entity is a ‘fiduciary,’ courts have found that the existence of a state statute or common law doctrine imposing trust-like obligations on a party may, at least in some circumstances, be sufficient to create a technical trust relationship that bars the discharge of a debt under section 523(a)(4). For purposes of section 523(a)(4), the applicable state law creating a fiduciary relationship must clearly outline the fiduciary duties and identify the trust property; if state law does not clearly and expressly impose trust-like obligations on a party, the court should not assume that such duties exist and should not find that there was a fiduciary relationship.

In re Moran, 413 B.R. at 185-86 (internal citations omitted) (emphasis added).

In their Supplemental Briefing Plaintiffs now assert that because Friendgift is a Delaware corporation, this Court must apply Delaware law to determine whether an express or technical trust existed. Because Defendant has had an opportunity to respond to this argument, the Court finds it appropriate to address this issue.

As discussed in the Ninth Circuit Bankruptcy Appellate Panel’s decision in *Plyam v. Precision Dev., LCC (In re Plyam)*, the law under which a corporate agreement arose or by which it is governed applies in determining whether an express or technical trust existed for purposes of § 523(a)(4). Defendant contends that during his tenure Friendgift was a California corporation and, therefore, that California law should apply.

The determination of whether Friendgift was a California or Delaware Corporation when Defendant breached his fiduciary duties is a question of fact. However, such a determination is not material for purposes of this motion because the outcome is the same under either state’s laws. This Court has already addressed Plaintiffs’ failure to demonstrate that Defendant’s conduct gave rise to an express trust

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such that he was acting in a fiduciary capacity under California law in its October 2, 2018 Ruling:

The Court notes that the LASC found that ‘Defendant was co-CEO and co-President of the Board of Directors of Friendgift . . . and admit[ted] that he owed a fiduciary duty to Friendgift during the relevant times.’ Plaintiffs’ RFJN, Ex. 1. But the Ninth Circuit made clear in *In re Cantrell* that ‘under California law a corporate officer is not a fiduciary within the meaning of § 523(a)(4).’ 329 F.3d at 1128. The *Cantrell* court explained, “although officers and directors [under California law] are imbued with the fiduciary duties of an agent and certain duties of a trustee, they are not trustees with respect to corporate assets.’ *Id.* at 1126; see also *Saccheri v. St. Lawrence Valley Dairy (In re Saccheri)*, 2012 WL 5359512, at * 11 (B.A.P. 9th Cir. Nov. 1, 2012), *aff’d*, 559 F. App’x 687 (9th Cir. 2015) (Rejecting argument that defendant was trustee for purposes of § 523(a)(4) based on the fact that defendant was ‘entrusted with the bank accounts’ and ‘had virtually ‘unlimited sway over them’’).

Doc. No. 41, p. 9. Plaintiffs Supplemental Brief does not add any new arguments or evidence to change the outcome if this Court were to apply California law.

As discussed below, this Court also finds that Plaintiffs have not established that an express trust existed under Delaware law within the meaning of § 523(a)(4).

1. Defendant’s Role as an Officer and Director of Friendgift Does Not Give Rise to an Express Trust Under Delaware Law

Plaintiffs cite a single case, *Matter of Reading Co.*, 711 F.2d 509, 517 (3d. Cir. 1983), with the following citation: “[under Delaware law, corporate directors] stand in a fiduciary relationship to their corporation and its stockholders,” but provide no further analysis.

From this Court’s limited canvass of applicable Delaware law, it appears the mere fact that the Defendant was an officer and director of Friendgift does not give rise to an express trust. See e.g., *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939) (“Corporate

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officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and its stockholders"). Furthermore, notwithstanding the Delaware Supreme Court's use of the term "express trust" in discussing corporate breaches of fiduciary duty in its seminal case *Bovay v. H.M. Byllesby & Co.*, 27 Del. Ch. 381, (Del. 1944), it appears such imposition of an express trust arises because of, and not prior to, any wrongdoing:

Sound public policy requires the acts of corporate officers and directors in dealing with the corporation to be viewed with a reasonable strictness ... where they are required to answer for wrongful acts of commission by which they have enriched themselves to the injury of the corporation, a court of conscience will not regard such acts as mere torts, but as serious breaches of trust, and will point the moral and make clear the principle that corporate officers and directors, while not in strictness trustees, will, in such case, be treated as though they were in fact trustees of an express and subsisting trust

27 Del. Ch. 381, 409-410.

Therefore, without more, the fact that the LASC found that Defendant breached his fiduciary duties while acting as an officer and director of Friendgiftr is insufficient to establish the existence of an express trust within the meaning of § 523(a)(4).

2. Questions of Material Fact Exist as to Whether the Agreement Created an Express Trust

Plaintiffs also contend that the Agreement created an express trust because the terms of the Agreement satisfy the requisite elements for creation of an express trust [Note 1]. Furthermore, Plaintiffs assert that the LASC already found that the Defendant used Plaintiffs' investment money for expenses that were not authorized by the Agreement. Supplemental Brief, citing RJN Ex. 1, p.3:4-16, 23-26 and p.4:5-8.

There is no specific reference to the Agreement in the LASC's findings and it is not readily apparent that the LASC ever reviewed or considered the Agreement. Furthermore, certain terms in the Agreement raise triable issues of material fact

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regarding the validity and enforceability of the Agreement. For example, the first sentence of the agreement states "In consideration of the investment to be made by Investor, the following terms and conditions by and between Company and Investor *shall be incorporated into appropriate existing and future documents to give them full force and effect.*" Supplemental Brief, Ex. 1 (emphasis added). Paragraph 17 on page 3 states "This Agreement and all proposed agreements are not binding on Company and Investor until all final documents reflecting Investor's Investment are fully executed by all parties." *Id.* Finally, the last paragraph of the Agreement states: "Upon receipt of this Agreement properly executed, we will execute it, and return a copy to you for your records. Following that, we will engage a legal representative in California to prepare the appropriate documents memorializing our Agreement." *Id.*

Additionally, Defendant appears to raise triable issues of fact concerning the authenticity and enforceability of the Agreement and Plaintiffs have not presented evidence demonstrating that Defendant is precluded from raising these challenges to the Agreement. *E.g. see* Supplemental Opposition, ¶ 5 ("Exhibit 1' Plaintiff has attached in their declaration is falsified. In particular, the document shows strikingly bright blue ink from Plaintiff ('May 5, 2009' and their signature) and dark black ink from others ink on document (which for a supposedly 10 year old document is highly unusual)").

Therefore, Plaintiffs have failed to establish as a matter of law that an express trust existed.

Based on the foregoing, Plaintiffs request for entry of judgment in their favor under § 523(a)(4) is denied.

C. Plaintiffs' Request For Leave to Amend is Denied

Plaintiffs seek leave to amend pursuant to Civil Rule 15. However, because the Court has entered a Scheduling Order [Doc. No. 15], the Plaintiffs' request for leave to amend is governed by *both* Civil Rules 16 and 15. As the Ninth Circuit has held, "[o]nce the ... court has filed a pretrial scheduling order pursuant to [Civil Rule] 16 ... that rule's standards [control]" with respect to a request for leave to amend. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Civil Rule 16(b)(4) provides that a scheduling order "shall not be modified except upon a

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showing of good cause and by leave of the ... judge." Civil Rule 16's "good cause" standard "primarily considers the diligence of the party seeking the amendment. The ... court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson*, 975 F.2d at 609.

If the Plaintiffs can demonstrate "good cause" under Civil Rule 16, the Plaintiffs must then show that amendment is also appropriate under Civil Rule 15. *See Johnson*, 975 F.2d at 609 (explaining that the "party seeking to amend [the] pleading after [the] date specified in [the] scheduling order must first show 'good cause' for amendment under Rule 16(b), then, if 'good cause' be shown, the party must demonstrate that amendment was proper under Rule 15").

The only basis for Plaintiffs' request for leave to amend is that their original counsel did not believe they had a viable embezzlement claim under § 523(a)(4) and did not plead that claim in the Complaint, but now Plaintiffs believe they could succeed on such a claim under applicable Ninth Circuit law.

In this Court's view, regret over a poor strategic decision is not "good cause" to grant Plaintiffs leave to amend and Plaintiffs fail to cite any authority in which a Court determined this was "good cause" within the meaning of Civil Rule 16 (or Civil Rule 15). Furthermore, this case has been pending for fifteen months, since October 23, 2017, and this Court has already made several accommodations for the Plaintiffs. On this record, the Court does not find that Plaintiffs have acted diligently in seeking to amend their complaint.

Having determined that the Plaintiffs have not shown "good cause" under Civil Rule 16 with respect to the request for leave to amend, it is unnecessary to consider whether the Plaintiffs have satisfied Civil Rule 15.

Therefore, Plaintiffs request for leave to amend is denied.

D. The Court Sets New Pretrial Conference and Trial Dates

The Court previously vacated the Pretrial Conference and trial dates and ordered Plaintiff to file the motion for summary judgment. By separate order, the Court will set new Pretrial Conference and trial dates. The Pretrial Conference shall take place

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on **May 14, 2019, at 11:00 a.m.** Trial shall take place during the week of **May 28, 2019**. The exact date of the trial will be set at the Pretrial Conference.

III. Conclusion

For the reasons set forth above, the OSC is discharged and the Motion is DENIED in its entirety.

After the hearing, the Court will prepare an order consistent with this tentative ruling.

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

Note 1: Plaintiffs' Supplemental Brief tracks California law with respect to creation of a trust.

Under California law, "the essential elements of an express trust are (1) sufficient words to create a trust; (2) a definite subject; and (3) a certain and ascertained object or res." *Banks v. Gill Distribution Ctrs., Inc. (In re Banks)*, 263 F.3d 862, 871 (9th Cir. 2001). Delaware law requires a similar, but not identical, showing: the "elements of an express trust are a competent settlor and trustee, intent, sufficient words to create a trust, an ascertainable trust res, certain ascertained beneficiaries, a legal purpose, and a legal term." *In re Moran*, 413 B.R. at 186. This Court again finds that it need not determine whether to apply California or Delaware law because, as set forth above, material questions of fact exist that prevent this Court from entering judgment in Plaintiffs' favor.

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By

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Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Leonard Pena

FRIENDGIFTR, INC

Represented By
Leonard Pena

Trustee(s):

Timothy Yoo (TR)

Pro Se

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-22337 Lannette Denise Johnson

Chapter 7

#5.00 Show Cause Hearing
RE: [18] **Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.**

Docket 1

*** VACATED *** REASON: DISMISSED 12/17/18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lannette Denise Johnson

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-24473 Brandon Ellis

Chapter 7

#6.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against an Individual. Sarah) Additional attachment(s) added on 12/13/2018 (Cowan, Sarah). Additional attachment(s) added on 12/13/2018 (Cowan, Sarah). Additional attachment(s) added on 12/13/2018 (Cowan, Sarah).

Docket 1

Tentative Ruling:

1/22/2019

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

Pleadings Filed and Reviewed:

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

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

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

Based upon the foregoing, the involuntary petition is DISMISSED. The Court will prepare and enter an appropriate order.

Party Information

Debtor(s):

Brandon Ellis

Pro Se

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

CONT... Brandon Ellis

Chapter 7

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#7.00 Hearing
RE: [231] Application for Compensation for Martini Akpovi Partners LLP,
Accountant, Period: 8/19/2018 to 10/31/2018, Fee: \$43,898.90, Expenses:
\$451.60.

Docket 231

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#8.00

Hearing
RE: [230] Application for Compensation for Dady & Gardner P.A., Special Counsel, Period: 7/13/2018 to 8/31/2018, Fee: \$23,144.13, Expenses: \$1,994.21

Docket 231

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#9.00 Hearing
RE: [229] Application for Compensation for Thompson Coburn LLP, Debtor's Attorney, Period: 7/13/2018 to 11/29/2018, Fee: \$341,607.50, Expenses: \$12,610.68.

Docket 229

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#10.00 Hearing
RE: [227] Motion to Dismiss Debtor Debtors Motion For Entry Of An Order
Dismissing Chapter 11 Case

Docket 227

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#11.00 Hearing
RE: [221] Motion to Reject Lease or Executory Contract (Copier Lease with Canon Financial)

Docket 221

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#12.00 Hearing
RE: [224] Motion to Reject Lease or Executory Contract (unexpired postage meter lease)

Docket 224

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#13.00 Status conference re chapter 11 case

FR. 7-17-18; 8-8-18; 10-10-18; 11-7-18; 12-12-18

Docket 4

*** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 A.M.

Tentative Ruling:

12/11/2018

Amended After hearing in RED

Tentative Ruling:

Having reviewed the Debtor's Status Report, the Court finds that the Debtor is making sufficient progress toward resolving this case. **The Debtor's contemplated motion seeking dismissal pursuant to §1112(b) shall be heard on January 23, 2019 at 10:00 a.m. The motion shall be filed and lodged in accordance with the local rules.**

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing

RE: [564] *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief*

fr. 12-4-18 ;fr. 12-5-18; 12-6-18

Docket 564

Tentative Ruling:

1/22/2019

Hearing required. The Court has received Movant's latest pleading amending its request.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing

RE: [399] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with All Care Medical Group, Inc. and Related Executory Contracts and Unexpired Lease Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration # 6 Exhibit E (part 2) # 7 Exhibit F # 8 Exhibit G (part 1) # 9 Exhibit G (part 2)) (Moyron, Tania)

FR. 10-24-18; 11-7-18

Docket 399

Tentative Ruling:

1/22/2019

See Cal. No. 17, below, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing
RE: [576] Motion to Reject Lease or Executory Contract Debtors Notice Of Motion And Motion To Reject, Pursuant To 11 U.S.C. § 365(A), Professional Services Agreement With All Care Medical Group, Inc. And Related Executory Contracts And Unexpired Lease Nunc Pro Tunc; Memorandum Of Points And Authorities; Declaration Of Stephen Campbell, M.D. [Filed Only To Amend Docket No. 399 In Accordance With Order Docket No. 522] (Moyron, Tania)

fr. 11-7-18; 12-12-18

Docket 576

Tentative Ruling:

1/22/2019

See Cal. No. 17, below, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts

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

Wednesday, January 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 HearingRE: [1180] Motion Debtors' Notice and Motion to Approve Settlement and Asset Purchase Agreement By and Between the Debtors, Verity Medical Foundation and Verity Health Services of California, Inc., and All Care Medical Group, Inc.; Declaration of Richard G. Adcock in Support Thereof (Moyron, Tania)

Docket 1180

Tentative Ruling:

1/22/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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

Wednesday, January 23, 2019

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#100.00 Hearing
RE: [683] Motion for approval of chapter 11 disclosure statement (SECOND AMENDED) Describing Second Amended Chapter 11 Plan Of Reorganization And Setting Dates And Procedures For Approval Of Second Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Ruben Monge, Jr. In Support Thereof, with Proof of Service

FR. 11-7-18

Docket 683

***** VACATED *** REASON: CONTINUED TO 3-6-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

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

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

Wednesday, January 23, 2019

Hearing Room 1568

11:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#101.00 HearingRE: [93] Motion to Consolidate Lead Case 18-21828 with 18-21723
WARNING: Incorrect hearing year on document. Matter is not on calendar for
1-23-2018 at 11:00 A.M. See docket entry #[96] for corrective action; Modified on
12/27/2018 (Evangelista, Maria).

Docket 93

Tentative Ruling:

1/22/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed

1. Debtors' and Debtors-In-Possession's Motion for Substantive Consolidation of Jointly Administered Cases [Doc. No. 93] (the "Motion")
2. Declaration of Charles DeBus in Support of Debtors' and Debtors-In-Possession's Motion for Substantive Consolidation of Jointly Administered Cases [Doc. No. 94] (the "DeBus Declaration")
3. Notice of Errata [Doc. No. 100]
4. Notice of Motion [Doc. No. 101]
5. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, F.A.S.S.T., LLC ("FASST") and Los Angeles Training Center, LLC ("LATC," and together with FASST, the "Debtors") move to substantively consolidate their estates, such that the assets of and claims against both estates are treated as existing against only a single pooled estate.

The Debtors also request that any order granting the Motion be effective *nunc pro tunc* to October 5, 2018 – the date that LATC filed its chapter 11 petition (four days prior to FASST's October 9, 2018 filing). The Debtors submit that *nunc pro tunc* relief is appropriate because (1) the Debtors filed petitions for relief within four days of one another and there is unlikely to be an substantial undue prejudice resulting

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

Wednesday, January 23, 2019

Hearing Room 1568

11:00 AM

CONT... F.A.S.S.T. LLC

Chapter 11

from the court granting *nunc pro tunc* relief; (2) it would reduce the administrative costs in preventing creditors from stating that possible fraudulent transfers or preferences were received from FASST instead of LATC; and (3) it would simplify the administrative process altogether.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Substantive consolidation is a general equitable power of the Bankruptcy Court. The procedure combines the assets and liabilities of multiple estates into a single pooled estate, and is used to avoid prejudice to creditors who have dealt with multiple entities as a single entity. In the Ninth Circuit, substantive consolidation is appropriate where (1) creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or where (2) the affairs of the debtors are so entangled that consolidation would benefit all creditors. *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 (9th Cir. 2000).

Here, both prongs of the *Bonham* test are satisfied. As detailed in the Declaration of Charles DeBus, the Debtors' managing member, creditors have generally dealt with the Debtors as a single economic unit, did not rely on their separate identity in extending credit, and the affairs of the Debtors' are inextricably entangled. Consolidation benefits all creditors by increasing the distribution they will receive on account of their claims. Treatment of two estates as a single estate will reduce administrative costs and thus increase all creditors' recovery.

Additionally, the Debtors' stated reasons for seeking *nunc pro tunc* relief are appropriate. *Bonham*, 229 F.3d at 765 (internal citations omitted) ("bankruptcy courts have sanctioned the substantive consolidation of two or more entities *nunc pro tunc* in order to allow a trustee or creditors to attach fraudulent transfers or avoidable preferences made by the debtor or consolidated entities as of the date of filing of the initial bankruptcy petition").

For the reasons set forth above, the Motion is GRANTED in its entirety.

The Debtors are directed to lodge a conforming proposed order, incorporating this

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

Wednesday, January 23, 2019

Hearing Room 1568

11:00 AM

CONT... F.A.S.S.T. LLC

Chapter 11

tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:18-01082 Gardner v. Soo-Hoo et al

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01082. Complaint by Tamara Nicole Gardner against Bryan J Soo-Hoo, Law Offices of Brian J Soo-Hoo, APC dba Bankruptcy Law Professionals. (Charge To Estate). Summons and Adversary Cover Sheet Nature of Suit: (91 (Declaratory judgment)) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: DISMISSED 6-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

DOES 1 through 10

Pro Se

Law Offices of Brian J Soo-Hoo,

Pro Se

Bryan J Soo-Hoo

Pro Se

Plaintiff(s):

Tamara Nicole Gardner

Represented By
Stella A Havkin

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

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

#2.00 Trial Date Set

RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)

fr. 11-26-18

Docket 48

***** VACATED *** REASON: PER ORDER ENTERED 11-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

CONT... Timothy M Rosen

Chapter 7

Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

fr. 9-24-18; 11-26-2018

Docket 1

Tentative Ruling:

1/24/2019

Hearing required

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee v.

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 1-3-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorenzo Arteaga	Pro Se
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Defendant(s):

Lorenzo Arteaga	Pro Se
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Angelica Maria Arteaga	Pro Se
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Joint Debtor(s):

Angelica Maria Arteaga	Pro Se
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Plaintiff(s):

FIDELITY NATIONAL TITLE	Represented By Karen A Ragland
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Trustee(s):

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC. et al

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

fr. 11-26-18

Docket 1

***** VACATED *** REASON: DISMISSED 8-22-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

Navient Solutions, LLC.

Pro Se

United States Department Of

Pro Se

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-24965 Jesus Jose Nevarez

Chapter 7

Adv#: 2:18-01069 Nevarez v. Shellpoint Mortgage Servicing et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01069. Complaint by Jesus J Nevarez against Shellpoint Mortgage Servicing , Quality Loan Servicing Corp , Mortgage Electronic Registration Systems,Inc , Bank of America N.A. . (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)) ,(71 (Injunctive relief - reinstatement of stay)) ,(81 (Subordination of claim or interest)) ,(91 (Declaratory judgment)) ,(01 (Determination of removed claim or cause))(Serrano, Vera)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 6-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Jose Nevarez	Pro Se
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Defendant(s):

Quality Loan Servicing, Corp.	Pro Se
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Bank of America N.A.	Pro Se
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Mortgage Electronic Registration	Pro Se
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Shellpoint Mortgage Servicing	Pro Se
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Plaintiff(s):

Jesus J Nevarez	Pro Se
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Trustee(s):

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-25586 Soheil Khanian

Chapter 7

Adv#: 2:18-01080 Khankhanian v. Khanian

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01080. Complaint by Bahram Khankhanian against Soheil Khanian . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-25-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Soheil Khanian

Represented By
Mitchell R Sussman

Defendant(s):

Soheil Khanian

Pro Se

Plaintiff(s):

Bahram Khankhanian

Represented By
Dean P Sperling

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud)) (Tran, Kelly Ann)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Monday, January 28, 2019

Hearing Room 1568

9:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

Adv#: 2:18-01067 Base Architecture Planning & Engr., Inc. v. UNITED STATES OF

#9.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01067. Complaint by Base Architecture Planning & Engr., Inc. against UNITED STATES OF AMERICA on behalf of the INTERNAL REVENUE SERVICE. (Fee Not Required). Nature of Suit: (91 (Declaratory judgment)) (Hayes, M)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

Defendant(s):

UNITED STATES OF AMERICA

Pro Se

Plaintiff(s):

Base Architecture Planning & Engr.,

Represented By
M Jonathan Hayes

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

Monday, January 28, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#100.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18

Docket 10

***** VACATED *** REASON: CONTINUED 4-1-19 at 10:00 A.M.**

Tentative Ruling:

9/20/2018

For the reasons stated below, the tentative ruling is to DENY the R/S Motion without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 10]
2. Trustee's Opposition to R/S Motion ("Trustee's Opposition") [Doc. No. 15]
3. As of the preparation of this tentative ruling, Movant has not filed a reply.

I. Facts and Summary of Pleadings

Motion

Rogelio and Carol Gonzalez (together, the "Debtors") filed this voluntary joint chapter 7 case on July 16, 2018. On August 30, 2018, creditor Wells Fargo Bank, N.A. ("Movant") filed a "Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 10] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property"). Movant asserts that cause exists to grant it relief from stay under § 362(d)(1) because the Debtors filed a Statement of Intention that indicates the Debtors' intent to surrender the Property ("Statement of Intention"). See Motion, Exhibit 8.

Movant also asserts that cause exists to grant it relief from stay under § 362(d)

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CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

(2) because the Debtors have no equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case. In support, Movant states that the total debt on the Property is \$591,518.92 which is comprised of Movant's first priority deed of trust secured by a lien in the amount of \$248,386.30 and approximately fifteen other liens securing an approximate indebtedness of \$351,518.92. *See* Request for Judicial Notice, Doc No. 10, PDF p. 15. After factoring in 8% costs of sale (\$49,384.64), Movant contends that the total debt exceeds the Property's \$617,308 fair market value.

Opposition

On September 10, 2018, the chapter 7 trustee filed an Opposition to the R/S Motion [Doc. No. 15] ("Trustee's Opposition"). The Trustee requests that the Court deny the R/S Motion as follows. First, the Trustee contends that Movant has not established sufficient cause for relief from stay under § 362(d)(1) because (i) Movant is adequately protected by an equity cushion of \$368,921.71 or 149%; and (ii) Debtors' Statement of Intention has no bearing on whether to grant Movant relief from stay because the Property is subject to administration by the Trustee pursuant to § 541.

Second, the Trustee contends that the Court should not grant Movant relief from stay pursuant to § 362(d)(2) because, using Movant's figures and assuming all the alleged liens are legitimate, the Debtors have approximately \$17,402.78 in equity in the Property. [NOTE 1] Additionally, the Trustee states that he is currently evaluating the validity of the other asserted liens on the Property and requests an opportunity to try to negotiate with those creditors for a consensual sale that might provide some benefit to the estate or pursue a sale free and clear of some or all those interests.

Reply

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth

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CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based on Movant's figures, the Court finds that Movant is adequately protected by a 149% equity cushion.

The Court also finds that the Trustee has the better argument with respect to Debtors' Statement of Intention.

Based on the foregoing, the Court finds that Movant is not entitled to relief from stay under § 362(d)(1).

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Since this is a chapter 7 case, it is undisputed that the Property is not necessary for an effective reorganization. Therefore, the Court must only determine whether the Debtors enjoy any equity in the Property. Using Movant's figures and deducting costs of sale, Debtors' \$100,000 homestead exemption, the Trustee's fees, and administrative claims, it appears unlikely that the Trustee will be able to administer the Property for the benefit of general unsecured creditors.

However, none of the purported junior lienholder filed a response to this R/S Motion. On balance, the Court is persuaded that it is premature to find that there is no equity in the Property given the relatively newness of this case and the lack of meaningful investigation by the Trustee into the validity of the junior liens.

III. Conclusion

The tentative ruling is to DENY the R/S Motion without prejudice.

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

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

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10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez Chapter 7

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

NOTE 1: This figure represents the total equity in the Property prior to deducting any costs of sale or taking into consideration Debtors' \$100,000 homestead exemption.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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

Monday, January 28, 2019

Hearing Room 1568

10:00 AM

2:18-24510 Bondera Garrett Newton

Chapter 7

#101.00 Hearing
RE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10918 CRENSHAW BL. #1 TRIPLEX INGLEWOOD, CA 90303 and proof of service.

Docket 8

***** VACATED *** REASON: CONTINUED 3-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bondera Garrett Newton	Pro Se
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Trustee(s):

Elissa Miller (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 28, 2019

Hearing Room 1568

10:00 AM

2:18-22666 David Ibarra

Chapter 7

#102.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Nissan Altima 3.5 SL Sedan 4D . (Herron, Keith)

Docket 13

Tentative Ruling:

1/24/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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CONT... David Ibarra

Chapter 7

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

Party Information

Debtor(s):

David Ibarra

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se

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

Wednesday, January 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing
RE: [1181] Motion Under §1113 to Reject and Terminate Terms of... Collective Bargaining Agreements Upon... Closing of Sale (Moyron, Tania)

Docket 1181

Tentative Ruling:

1/29/2019

No appearances required. The Court APPROVES the settlement reached between the Debtors and the IFPTE Local 20.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho

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

Wednesday, January 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing
RE: [1182] Motion Debtors' Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Regional Hospital Upon Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

Docket 1182

***** VACATED *** REASON: CONTINUED 2-8-19 AT 10:00 AM.**

Tentative Ruling:

1/29/2019

Continued for further briefing. Court to prepare order.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 HearingRE: [1191] Motion Debtors' Motion Under 1113 of the Bankruptcy Code to Reject and Terminate the Terms of the Licensed Vocational Nurses Association's Collective Bargaining Agreement with O'Connor Hospital Upon Closing of the Sale of these Hospitals to the County of Santa Clara (Moyron, Tania)

Docket 1191

Tentative Ruling:

1/29/2019

No appearances required. The Court APPROVES the settlement reached between the Debtors and the California Vocational Nurses Association.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 Hearing

RE: [1192] Motion Debtor's Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union-United Healthcare Workers-West's Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

Docket 1192

***** VACATED *** REASON: CONTINUED 2-8-19 AT 10:00 A.M.**

Tentative Ruling:

See Cal. No. 2, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1545 Calendar**

Wednesday, January 30, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medi-Cal Provider Agreements

Docket 0

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medicare Provider Agreements

Docket 0

***** VACATED *** REASON: CONTINUED 2-6-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
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Wednesday, January 30, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1153] Rejection and/or modification of collective bargaining agreements.

Docket 0

***** VACATED *** REASON: DUPLICATE OF CALENDAR NUMBERS
1 - 4**

Tentative Ruling:

Duplicate entry.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

United States Bankruptcy Court
Central District of California
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Wednesday, January 30, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1153] Cure objections

Docket 0

*** VACATED *** REASON: PER ORDER ENTERED 1-29-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 HearingRE: [1219] Motion To Stay Pending Appeal (related documents 1207 Notice of Appeal and Statement of Election (Official Form 417A))

Docket 1219

Tentative Ruling:

1/29/2019

For the reasons set forth below, the California Attorney General's Motion—which seeks a stay pending appeal of the Sale Order is DENIED.

Pleadings Filed and Reviewed:

- 1) California Attorney General's Motion to Stay the Court's Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests Pending Appeal of the Court's Memorandum of Decision Overruling Objections of the California Attorney General and Sale Order [Doc. No. 1219] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 1220]
 - b) Order: (1) Denying California Attorney General's Application for a Hearing on Shortened Notice and (2) Setting Hearing on Attorney General's Motion for Stay Pending Appeal for January 30, 2019, at 10:00 a.m. [Doc. No. 1226]
 - c) Notice of Hearing on [Motion] [Doc. No. 1235]
- 2) Debtors' Opposition to [Motion] [Doc. No. 1301]
 - a) Objection to Declaration of Alicia Berry in Support of [Motion] [Doc. No. 1302]
 - b) Submission of Signature Page of Declaration of Richard G. Adcock in Support of Opposition [Doc. No. 1308]
 - c) Submission of Signature Page of Declaration of Sara H. Cody in Support of Opposition [Doc. No. 1337]
 - d) The County of Santa Clara's Joinder in Debtors' Opposition to California Attorney General's Motion to Stay Sale Order [Doc. No. 1334]
- 3) Official Committee of Unsecured Creditors' Objection to California Attorney General's Motion for Stay Pending Appeal [Doc. No. 1318]
- 4) Reply to Oppositions Filed by Debtors, County of Santa Clara, and the Official

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CONT... Verity Health System of California, Inc. Chapter 11

Creditors' Committee to California Attorney General's [Motion] [Doc. No. 1365]

- 5) Relevant Prior Decisions and Orders of the Court:
- a) Memorandum of Decision Overruling Objections of the California Attorney General to the Debtors' Sale Motion [Doc. No. 1146]
 - b) Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief [Doc. No. 1153] (the "Sale Order")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On December 19, 2019, the Court conducted a hearing on the Debtors' motion for authorization to sell Saint Louise Regional Hospital ("St. Louise") and O'Connor Hospital ("O'Connor," and together with St. Louise, the "Hospitals") to the County of Santa Clara ("Santa Clara"). On December 26, 2018, the Court entered a *Memorandum of Decision Overruling Objections of the California Attorney General to the Debtors' Sale Motion* [Doc. No. 1146] (the "Sale Memorandum"). Among other things, the Sale Memorandum found that the Debtors were authorized to sell the Hospitals, free and clear of various conditions imposed by the Attorney General in connection with a 2015 restructuring transaction (the "Conditions"). On December 27, 2018, the Court entered an *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Doc. No. 1153] (the "Sale Order"). The sale is currently projected to close on March 4, 2019.

On January 7, 2019, the California Attorney General (the "Attorney General") appealed the Sale Order. On January 9, 2019, the Attorney General filed a motion to stay the Sale Order pending appeal (the "Motion"), and filed an application seeking a hearing on the Motion on shortened notice (the "Application"). The Court declined to hear the Motion on shortened notice for the following reasons:

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CONT... **Verity Health System of California, Inc.**

Chapter 11

The Application assumes that an emergency hearing on the Motion is necessary to prevent the California Attorney General's appeal of the [Sale Order] ... from becoming statutorily moot pursuant to § 363(m) of the Bankruptcy Code. Pursuant to the Asset Purchase Agreement, the transactions authorized by the Sale Order cannot close until after hearings on the Debtors' motions seeking authorization to modify and/or reject various collective bargaining agreements, which are scheduled to take place on January 30, 2019. Section 363(m)'s statutory mootness provisions are not triggered unless (a) the Attorney General fails to obtain a stay pending appeal (b) prior to the closing of the transactions contemplated by the Sale Order. *See, e.g., Brown v. Ellman (In re Brown)*, 851 F.3d 619, 622 (6th Cir.), *cert. denied sub nom. Brown v. Ellmann*, 138 S. Ct. 328, 199 L. Ed. 2d 212 (2017) ("appeals from a bankruptcy court's decision to grant the trustee authority to sell certain property are moot if the appellant has failed to obtain a stay from the bankruptcy court's order *and the trustee has already conveyed the property to a bona fide purchaser for value*") (emphasis added). In the Court's view, the Attorney General's fear that his appeal of the Sale Order will become statutorily moot absent an emergency hearing on the Motion is not well founded.

Order: (1) Denying California Attorney General's Application for a Hearing on Shortened Notice and (2) Setting Hearing on Attorney General's Motion for Stay Pending Appeal for January 30, 2019, at 10:00 a.m. [Doc. No. 1226] (footnotes omitted).

Summary of Papers Filed in Connection with the Motion

In support of his contention that he is likely to prevail upon appeal, the Attorney General reiterates the arguments that he made in opposition to the Sale Motion. The Attorney General asserts that absent a stay pending appeal, he will suffer irreparable injury, based on the possibility that his appeal of the Sale Order may become statutorily moot. The Attorney General contends that the balance of hardships weighs in favor of a stay. According to the Attorney General, a stay will only minimally affect the Debtors by slightly delaying a distribution to creditors. Finally, the Attorney General asserts that a stay is in the public interest because it would allow him to continue enforcing the Conditions, thereby vindicating his policy and regulatory

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CONT... Verity Health System of California, Inc.

Chapter 11

powers.

The Debtors oppose the Motion. The Debtors contend that the Attorney General is not likely to prevail upon appeal because he has not shown that the sale is subject to his review. The Debtors dispute the Attorney General's contention that he will suffer irreparable harm absent a stay. Richard Adcock, the CEO of Debtor VHS, testifies that if a stay pending appeal is granted, "the Sale will be in material danger of collapsing and not closing." Adcock Decl. at ¶6.

The Official Committee of Unsecured Creditors (the "Committee") opposes the Motion. The Committee contends that if the sale is not timely consummated, the likely outcome will be that the Hospitals will be shut down and the Debtors' estates liquidated.

In his Reply to the Oppositions submitted by the Debtor and the Committee, the Attorney General notes that Santa Clara has not made a legally binding commitment to provide various healthcare services required by the Conditions, which the Attorney General contends are essential. The Attorney General disputes the assertion that a stay will cause the sale to collapse.

II. Findings and Conclusions

At the outset, the Court addresses the Debtors' evidentiary objections to the Declaration of Deputy Attorney General Alicia Berry (the "Berry Decl."). The Berry Decl. summarizes actions undertaken by the Attorney General in connection with the imposition of the Conditions, including the retention of a healthcare expert who assisted in developing the Conditions. The Debtors object to the Berry Decl. as hearsay, arguing that the declaration is an effort to introduce the expert testimony of an unidentified healthcare expert.

The Court will consider the Berry Decl., but only for the purpose of providing background information relating to the imposition of the Conditions. Because the healthcare expert has not been identified and has not submitted a declaration, the Berry Decl. provides no evidentiary support for arguments regarding the effect of the Conditions on public health and safety.

Turning to the merits, the Attorney General's application for a stay pending appeal of the Sale Order is denied. Pursuant to Fed. R. Bankr. P. 8007(a)(1), the Court may issue a stay of a judgment, order, or decree pending appeal. In determining whether to grant a stay pending appeal, the Court considers the following four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured

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CONT...

Verity Health System of California, Inc.

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absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009).

As the Supreme Court has explained, a stay pending appeal

"is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co.*, 272 U.S., at 672, 47 S.Ct. 222. It is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.*, at 672–673, 47 S.Ct. 222; see *Hilton, supra*, at 777, 107 S.Ct. 2113 ("[T]he traditional stay factors contemplate individualized judgments in each case"). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion....

The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be "better than negligible." ... By the same token, simply showing some "possibility of irreparable injury," *Abbassi v. INS*, 143 F.3d 513, 514 (C.A.9 1998), fails to satisfy the second factor.

Id. at 433–35.

To be entitled to a stay pending appeal, the moving party must make a "minimum permissible showing" with respect to each of the four factors. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011). Provided the moving party meets a minimum threshold as to each factor, the Court may "balance the various stay factors once they are established." *Id.* at 965. Under this balancing approach, a stronger showing of irreparable harm can offset a weaker showing of likelihood of success on the merits, and vice versa—provided that the minimum threshold with respect to each factor has been established. *Id.* at 965–66; see also *id.* at 964 ("Petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of hardships tips sharply in petitioner's favor. These standards represent the outer extremes of a continuum, with the relative hardships to the parties providing the critical element in determining at what point on the continuum a stay pending review is justified.").

1. Likelihood of Success on the Merits

As the Ninth Circuit has explained:

The first showing a stay petitioner must make is "a strong showing that he

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Verity Health System of California, Inc.

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is likely to succeed on the merits." *Id.* at 1761 (quoting *Hilton*, 481 U.S. at 776, 107 S.Ct. 2113) (quotation marks omitted). There is some uncertainty as to the exact degree of likely success that stay petitioners must show, due principally to the fact that courts routinely use different formulations to describe this element of the stay test. What is clear, however, is that to justify a stay, petitioners need not demonstrate that it is more likely than not that they will win on the merits....

There are many ways to articulate the minimum quantum of likely success necessary to justify a stay—be it a "reasonable probability" or "fair prospect," as *Hollingsworth*, 130 S.Ct. at 710, suggests; "a substantial case on the merits," in *Hilton*'s words, 481 U.S. at 778, 107 S.Ct. 2113; or, as articulated in *Abbassi*, 143 F.3d at 514, that "serious legal questions are raised." We think these formulations are essentially interchangeable, and that none of them demand a showing that success is more likely than not. Regardless of how one expresses the requirement, the idea is that in order to justify a stay, a petitioner must show, at a minimum, that she has a substantial case for relief on the merits.

Leiva-Perez, 640 F.3d at 967–68.

The Attorney General has failed to demonstrate that he is likely to succeed on the merits. The Sale Memorandum set forth in detail the Court's reasons for overruling the Attorney General's opposition to the Sale Motion. In the instant Motion, the Attorney General reiterates arguments previously rejected by the Court. The Attorney General does not present any new arguments showing that reconsideration of the findings contained in the Sale Memorandum is warranted.

Of particular significance is the Attorney General's inability to identify any specific provision of California law that provides him with either authority to review the sale, or authority to insist that the Conditions continue to apply subsequent to the sale. In the Sale Memorandum, the Court explained why the Attorney General lacked the ability to review the sale under Cal. Corp. Code §§ 5914–30. *See* Sale Memorandum at 9–11. The Court then noted that the Attorney General had not identified any specific provision of California law establishing his authority to review the sale. *Id.* The Attorney General still has not identified any specific statutory provision that establishes his authority to review the sale.

2. Irreparable Injury

The Attorney General argues that he will be irreparably injured absent a stay

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because the closing of the sale, in conjunction with the Court's finding that Santa Clara is a good-faith purchaser within the meaning of § 363(m), will render an appeal moot. As a result, the Attorney General argues, he will be unable to obtain appellate review of an important issue affecting the welfare of the people of California.

Outside the bankruptcy context, the Ninth Circuit has held that the certainty that an appeal will become moot is enough to constitute irreparable injury. *See Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir.1986). However, within bankruptcy, a majority of courts have concluded that mootness does not demonstrate irreparable injury. *See, e.g., Ohanian v. Irwin (In re Irwin)*, 338 B.R. 839, 853 (E.D. Cal. 2006) ("It is well settled that an appeal being rendered moot does not itself constitute irreparable harm"); *In re Red Mountain Mach. Co.*, 451 B.R. 897, 908-09 (Bankr. D. Ariz. 2011) (internal citations omitted) ("[T]he law is clear in the Ninth Circuit that irreparable injury cannot be shown solely from the possibility that an appeal may be moot"); *In re Convenience USA, Inc.*, 290 B.R. 558, 563 (Bankr. M.D.N.C. 2003) (stating that "a majority of the cases which have considered the issue have found that the risk that an appeal may become moot does not, standing alone, constitute irreparable injury" and citing cases).

This Court addressed the Attorney General's motion for a stay pending appeal in *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 831-32 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018). On the facts presented in *Gardens*, the Court found that the likelihood of mootness did amount to irreparable harm, although it found the question to be a close one. *Id.* The Court explained that the "inquiry is complicated in this case by the fact that the Attorney General seeks review of an important issue of state law that will likely recur in future bankruptcy cases." *Id.*

As set forth above, despite having been provided multiple opportunities to do so, the Attorney General still has not identified the specific statutory provision establishing his authority to review the sale or to insist upon continued applicability of the Conditions. The legal arguments raised by the Attorney General here are far weaker than the arguments presented in *Gardens*. Given the lack of merit in the Attorney General's arguments, the Court finds that the likelihood of mootness does not constitute irreparable injury.

3. Balance of the Hardships

The injury to the Debtors and to other stakeholders resulting from issuance of a stay will be substantially greater than the injury to the Attorney General from denial of

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a stay. Richard Adcock, the CEO of Debtor VHS, testifies that if the Sale Order is stayed, “it is my opinion that the sale will be in material danger of collapsing and not closing.” Adcock Decl. at ¶6. Mr. Adcock’s testimony is corroborated by the testimony of Jeffrey Smith, the County Executive for the County of Santa Clara. Mr. Smith testifies that stay “would effectively terminate the [sale] Transaction.” Smith Decl. at ¶8.

The Debtors have expended significant resources in reliance upon the Sale Order. More than 100 people have been working with representatives of Santa Clara County to effectuate the transfer of the Hospitals’ operations. *Id.* at ¶7. Among other things, the parties have spent significant time preparing a Transition Services Agreement; transferring the Hospitals’ information technology functions to Santa Clara County; communicating with the public regarding the transition; conducting job fairs to facilitate the transition; attending to various accounting and financial management issues; and preparing legal documents necessary for the transition. *Id.* at ¶10. If the sale collapses, all of that work will have been wasted.

A stay of the Sale Order would harm employee morale at the Hospitals by creating additional uncertainty. Following entry of the Sale Order, 104 employees who worked at the Hospitals between September 4, 2018 and December 28, 2018 have left. Mills Decl. at ¶13. The uncertainty created by a stay could cause more employees to leave, further damaging the Hospital’s operations.

By contrast, denial of a stay will most likely result in the Attorney General being unable to obtain appellate review of the Court’s decision. This injury is less severe than the injuries that would be suffered by the Debtors and other stakeholders were a stay issued, because the Court has found that the Attorney General’s appeal is unlikely to succeed and does not raise serious legal questions.

4. Public Interest

The public interest weighs strongly against staying the Sale Order. The most probable outcome of a stay would be the collapse of the sale. If the sale collapsed, there is a strong possibility that the Debtors would lack sufficient funds to maintain operations pending a sale to another buyer, and would be required to close the Hospitals. Closure of the Hospitals, even if it were temporary, would severely harm the public interest.

The Attorney General’s theory is that public health and welfare can be adequately protected only if he has the opportunity to enforce the Conditions. This argument overlooks the reality that enforcement of the Conditions would likely lead Santa Clara

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to withdraw from the sale. The Hospitals would then likely be closed for an extended period time until the sale to a new buyer could be consummated. Far from protecting public health and welfare, a stay would set in motion a series of events that, in all probability, would reduce the availability of healthcare services to the public.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1235] Motion to stay the court's order (A) authorizing the sale of certain of the debtors' assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances and other interests pending appeal of the court's memorandum of decision overruling objections of the California Attorney General and Sale order

Docket 0

***** VACATED *** REASON: DUPLICATE OF NO. 9**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
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Monday, February 4, 2019

Hearing Room 1568

9:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

fr. 9-24-18; 11-26-2018 ; 1-28-19

Docket 1

Tentative Ruling:

2/1/2019

Hearing required.

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, February 4, 2019

Hearing Room 1568

10:00 AM

2:18-22646 Universal Broadcasting Network Inc

Chapter 7

#1.00 Hearing

RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1438 North Gower Street, Los Angeles, California; Building 35: Rooms 156A, 156B, 156C, 159A, 159B, and 159C. . (Shapiro, Scott)

fr: 1-7-19

Docket 13

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON 1-30-19**

Tentative Ruling:

For the reasons set forth herein, the Motion is DENIED without prejudice. The proof of service [Doc. No. 16] does not reflect that the Motion was served on the Debtor or the Debtor's attorney as required by Local Bankruptcy Rule 4001-1(c)(1)(C)(i). The Movant may refile the Motion with service upon the Debtor and the Debtor's attorney in accordance with applicable local and federal rules.

Party Information

Debtor(s):

Universal Broadcasting Network Inc

Represented By
Leroy Bishop Austin

Trustee(s):

Elissa Miller (TR)

Pro Se

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Monday, February 4, 2019

Hearing Room 1568

10:00 AM

2:18-23818 Yolanda Medina

Chapter 7

#2.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7424 Luxor Street, Downey, CA 90241 . (O, Christina)

Docket 12

Tentative Ruling:

2/1/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$575,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$583,850.91. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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10:00 AM

CONT... Yolanda Medina

Chapter 7

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

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

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

Party Information

Debtor(s):

Yolanda Medina

Represented By
Raymond Perez

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-24145 Fortuna Due, LLC

Chapter 7

#3.00 HearingRE: [5] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7839-7841 West Manchester Ave Playa Del Rey CA 90293 . (Katz, Neil)

Docket 5

Tentative Ruling:

2/1/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$1,740,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$178,363.08. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 10.3% equity cushion in the property. The Ninth Circuit has established that an equity

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CONT... Fortuna Due, LLC

Chapter 7

cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

The Court notes that Debtor's case was dismissed on January 17, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

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

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

Party Information

Debtor(s):

Fortuna Due, LLC

Pro Se

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Hearing Room 1568

10:00 AM

2:18-24618 B City LLC

Chapter 7

#4.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 107 East Broadway Avenue, Glendale, CA 91205 . WARNING: Matter is not on calendar for 2-5-19 at 2:00 P.M. See docket entry # [11] for corrective action; Modified on 1/9/2019 (Evangelista, Maria).

Docket 10

***** VACATED *** REASON: CONTINUED TO 2-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B City LLC

Represented By
Roland H Kedikian

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Monday, February 4, 2019

Hearing Room 1568

10:00 AM

2:18-24706 Bennie Ray Freeman and Geraldine Jordan-Freeman

Chapter 7

#5.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6049 Graywood Ave, Lakewood, CA 90712 . (Jafarnia, Merdaud)

Docket 14

Tentative Ruling:

2/1/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$525,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$4,751.84. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 0.9% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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CONT... Bennie Ray Freeman and Geraldine Jordan-Freeman Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

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

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

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

Party Information

Debtor(s):

Bennie Ray Freeman	Pro Se
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Joint Debtor(s):

Geraldine Jordan-Freeman	Pro Se
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Trustee(s):

David M Goodrich (TR)	Pro Se
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Tuesday, February 5, 2019

Hearing Room 1568

10:00 AM

2:10-64372 Nasir Eftekhari

Chapter 7

Adv#: 2:11-01944 MP Property Partners - Grapevine LLC and MP Proper v. Eftekhari

#1.00 HearingRE: [98] Motion to Reopen Case Motion to Reopen Adversary Proceeding to Enter Judgment; Memorandum of Points and Authorities; Declarations of John McDonnell and Adrian Chiang in Support Thereof.

Docket 98

Tentative Ruling:

2/4/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion to Reopen Adversary Proceeding to Enter Judgment [Doc. No. 98] (the "Motion")
 - a) Notice of Motion [Doc. No. 99]
- 2) Stipulation for Entry of Nondischargeable Judgment [Doc. No. 94]
- 3) Order Approving "Stipulation for Entry of Nondischargeable Judgment" [Doc. No. 95]
- 4) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

Plaintiffs MP Property Partners—Grapevine, LLC and MP Property Partners—90 Acres, LLC (the "Plaintiffs") move to reopen this adversary proceeding and move for the entry of judgment in their favor pursuant to a *Stipulation for Entry of Nondischargeable Judgment* [Doc. No. 94] (the "Stipulation") between Plaintiffs and Defendant. All prior proceedings in this action were heard by the Hon. Richard M. Neiter. Upon the filing of the instant Motion, the case was reassigned to the undersigned Judge.

Plaintiff and Defendant executed the Stipulation on April 2, 2014. Doc. No. 94. The material terms of the Stipulation are as follows:

- 1) Defendant shall pay Plaintiff the sum of \$150,000 (the "Settlement Sum") over a period of ten years, with payments to be made monthly.

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CONT...

Nasir Eftekhari

Chapter 7

- 2) If a monthly payment is not received by the last business day of a month, upon ten days written notice to the Defendant, the entire remaining balance of the Settlement Sum shall be immediately due and payable. At that point, upon motion of the Plaintiffs attesting to the Defendant's default, final judgment against the Defendant shall be entered.

On April 21, 2014, Judge Neiter entered an *Order Approving "Stipulation for Entry of Nondischargeable Judgment"* [Doc. No. 95] (the "Order"). The proposed order on the Stipulation submitted by the Plaintiffs provided that the Court would retain jurisdiction to enforce the Stipulation until the terms of the settlement had been fully satisfied. The order entered by Judge Neiter modified the retention of jurisdiction language to provide that the Court retained jurisdiction "until the earlier of one year following the entry of this order and there is full satisfaction of the terms of the Judgment and the Stipulation." Order at 2. The adversary proceeding was closed on June 5, 2014, approximately fourteen months after entry of the Order approving the Stipulation.

According to Plaintiffs, Defendant has defaulted under the Stipulation, and owes Plaintiffs \$112,175.00, plus attorneys' fees of \$4,925.84 and costs of \$266.27. Chiang Decl. at ¶¶5–6. Plaintiffs provided Defendant notice to cure the default on November 7, 2018. Motion at Ex. 4. Plaintiffs state that Defendant has failed to cure the default, and request entry of judgment against the Defendant in the total amount of \$117,367.11. No Opposition to the Motion is on file.

II. Findings and Conclusions

The Court finds that it has jurisdiction to grant the relief requested. A Bankruptcy Court also has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The three types of jurisdiction conferred under 28 U.S.C. §1334(b) are known as "arising under," "arising in," and "related to" jurisdiction. "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). In *Canal Fin. Corp. v. Sarsenstone Corp. (In re Old Canal Fin. Corp.)*, 550 B.R. 519, 526 (C.D. Cal. 2016), the court found that it had arising under jurisdiction to reopen an adversary proceeding to interpret a judgment and related settlement agreement. The *Canal Fin.* court stated that it also possessed ancillary

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jurisdiction to interpret the judgment and settlement agreement. *Id.*

Here, the Court has both arising under and ancillary jurisdiction to interpret and enforce the Stipulation and the Order thereon. The Court finds that the language in the Order providing for a retention of jurisdiction only until one year following entry of the Order did not permanently divest the Court of jurisdiction. Instead, such language was intended to enable the Clerk of the Court to close the case after one year, so that it would not remain open for the full ten-year period during which payments were due under the Stipulation. Nothing in the Order prevents the Court from reasserting jurisdiction, and reopening the case, in circumstances such as those presented here.

Reopening the case, and entering judgment as requested by the Plaintiffs, is necessary to effectuate the treatment that the parties bargained for when entering into the Court-approved Stipulation. The Court notes that Defendant was advised by competent counsel when he executed the Stipulation. There is no dispute that Defendant has defaulted on his obligations under the Stipulation. The Stipulation provides that, upon Defendant's default, the Plaintiffs are entitled to entry of judgment for the unpaid portion of the Settlement Sum.

The Stipulation provides that "if any action at law or in equity is necessary ... to seek entry of Judgment as described herein, ... the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which said Party may be entitled." Stipulation at ¶17. Having reviewed the time entries setting forth the actions taken by Plaintiffs to collect the sums owed under the Stipulation, the Court finds the attorneys' fees of \$4,925.84 and costs of \$266.27 incurred by Plaintiffs to be reasonable.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Court will reopen the adversary proceeding and enter judgment in favor of Plaintiffs in the amount of \$112,175.00, plus attorneys' fees of \$4,925.84 and costs of \$266.27. Within seven days of the hearing, Plaintiffs shall submit (1) a proposed order reopening the adversary proceeding, which shall incorporate this tentative ruling by reference, and (2) a proposed judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Nasir Eftekhari

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Nasir Eftekhari

Represented By
Robert S Altagen

Defendant(s):

Nasir Eftekhari

Represented By
Robert S Altagen

Plaintiff(s):

MP Property Partners - Grapevine

Represented By
Mark T Young

Trustee(s):

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, February 5, 2019

Hearing Room 1568

10:00 AM

2:16-22185 Integrity Retail Distribution, Inc.

Chapter 7

#2.00 HearingRE: [64] Motion For Sale of Property of the Estate under Section 363(b) - No Fee and Notice of Motion For Sale of Property of the Estate under Section 363(b) (Dye (TR), Carolyn)

Docket 64

Tentative Ruling:

2/4/2019

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

Pleadings Filed and Reviewed

1. Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances and Related Relief [Doc. No. 64] (the "Sale Motion")
2. Notice of Errata re Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances and Related Relief [Doc. No. 67]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Integrity Retail Distribution, Inc., (the "Debtor") filed this voluntary chapter 7 case on September 16, 2016 (the "Petition Date"). Carolyn Dye is the acting chapter 7 trustee (the "Trustee").

The Trustee has determined that there may be certain property of the Debtor's estate consisting of known or unknown assets or claims, which have not previously been sold, assigned, or transferred (the "Remnant Assets"). The Trustee believes potential unknown assets might include unscheduled refunds, overpayments, deposits, judgments, claims or other payment rights that would accrue in the future. **[Note 1]**. The Remnant Assets do not include: (a) cash held by the Trustee on behalf of the estate at the time of the Purchase Agreement in bank accounts earmarked for distribution to creditors and/or payment of professional fees, (b) any and all Goods

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Chapter 7

(e.g., office furniture) of the Debtor, and (c) the Purchase Price (defined below).

The Trustee has conducted due diligence and determined that the cost of pursuing the Remnant Assets will likely exceed the benefit that the estate would receive if the Trustee were to locate and administer any such assets.

Accordingly, the Trustee seeks an order authorizing her to sell the estate's interest in the Remnant Assets to Oak Point Partners, LLC, a Delaware limited liability company ("Buyer"), on the terms set forth in the asset purchase agreement (the "Purchase Agreement") attached to the Sale Motion as Exhibit A, for \$6,000 (the "Purchase Price"). The proposed sale does not require the estate to pay any commissions, fees, or other costs of sale, except for the cost of filing and service the Sale Motion and related documents.

In connection with the sale, the Trustee requests entry of an order authorizing the sale free and clear of all liens, claims, interests, and encumbrances pursuant to §§ 363(b) and (f) and finding the Buyer to be a good faith purchaser pursuant to § 363(m). The Trustee also seeks approval of proposed bidding procedures set forth on page 3 of the Sale Motion. Finally, the Trustee requests a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h).

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has articulated sound business justification for the sale. The Trustee states that she is unaware of any Remnant Assets and believes that the cost of pursuing any Remnant Assets would likely exceed the benefit to the estate. Declaration of Carolyn Dye, ¶¶ 6-7. The Trustee further states that she believes the proposed sale is in the best interest of the estate because it will allow for an immediate

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infusion of \$6,000 for the benefit of the estate for assets that the estate might not otherwise derive an economic benefit from. *Id.* at ¶ 8. Furthermore, the sale is subject to overbids to ensure that the assets are sold for the highest and best achievable price. The Trustee states that the proposed sale was negotiated at arm's length and in good faith.

The sale may proceed free and clear of all liens, claims, interests and encumbrances under § 363(f). Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

The Trustee states that, to the extent that there are any interests that may be asserted in the Remnant Assets, one or more of the foregoing conditions have been satisfied. Although the Trustee does not identify which subsection of § 363(f) she believes would be satisfied, the Court finds that the fact that the Trustee is not aware of any Remnant Assets or whether any individual or entity holds an interest in such assets is sufficient to give rise to a bona fide dispute under § 363(f)(4) [Note 2].

The proposed Bidding Procedures are approved. In the event of an overbid that meets the proposed conditions a-e, the Court will conduct an auction in court concurrently with the hearing on the Sale Motion. Once the winning bidder is determined, the Court will take testimony to determine whether the winning bidder is entitled to the protections of § 363(m).

The fourteen-day stay under Bankruptcy Rule 6004(h) is waived.

III. Conclusion

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For the reasons set forth above, the Sale Motion is GRANTED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1: On January 18, 2019, the Trustee filed a Notice of Errata to amend statements set forth in the Sale Motion and clarify that the sale does not include certain used trailers which are the subject of the Trustee's Notice of Proposed Abandonment [Doc. No. 66].

Note 2: In the future, the Trustee is directed to provide an analysis of which subsection of section 363 is implicated and why or the Court will decline to approve a proposed sale free and clear under section 363(f).

Party Information

Debtor(s):

Integrity Retail Distribution, Inc.

Represented By
Richard L Barnett

Trustee(s):

Carolyn A Dye (TR)

Represented By
Leonard M Shulman
Rika Kido

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-22631 Joseph J. Forman

Chapter 7

#3.00 HearingRE: [23] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Chapter 7 Trustee's Motion for Authority to Sell Real Property Located at 7515 East N. Avenue, Kalamazoo, MI, [Parcel 39-07-33-455-055] Free and Clear of Liens, Claims and Interests to Highest Bidder at Internet Auction to be Held on February 19, 2019; Memorandum of Points and Authorities and Declaration of Elissa D. Miller in Support Thereof. (Miller (TR), Elissa)

Docket 23

Tentative Ruling:

2/4/2019

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

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Motion for Authority to Sell Real Property Located at 7515 East N. Avenue, Kalamazoo, MI [Parcel 39-07-33-455-055] Free and Clear of Liens, Claims and Interests to Highest Bidder at Internet Auction to be Held on February 19, 2019 [Doc. No. 23] (the "Sale Motion")
2. Notice of Sale Motion [Doc. No. 24]
3. Notice of Sale of Estate Property [Doc. No. 25]

I. Facts and Summary of Pleadings

Joseph J. Forman (the "Debtor") filed this voluntary chapter 7 case on October 26, 2018 (the "Petition Date"). Elissa Miller is the acting chapter 7 trustee (the "Trustee").

Through the Trustee's investigations, the Trustee learned that prior to the Petition Date the Debtor operated a convenience store on commercial real property located at 7515 East N. Avenue, Kalamazoo, MI [Parcel 39-07-33-455-055] (the "Property"). The Trustee is informed that the store closed prior to the Petition Date, but the Debtor retains an interest in the Property with an estimated fair market value of \$50,000 - \$75,000.

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The Trustee seeks an order authorizing a sale of the Property free and clear of liens, claims and interests under § 363(f) to the highest bidder at a live internet auction to be conducted on February 19, 2019 by LastBid Real Estate ("LastBid") on the terms and conditions set forth in the Online Real Estate Terms, a copy of which is attached to the Declaration of Elissa Miller (the "Miller Decl.") as Exhibit 1. The minimum proposed bid for the sale is \$5,000 and the Property is being sold on an "as is, where is" basis with no warranties or representations.

The Trustee has concurrently filed a motion to employ LastBid as her auctioneer. *See* Doc. No. 21. Lastbid will market the sale by listing it on multiple online platforms. In exchange for its services, LastBid will charge a 10% buyer's premium to be paid by the buyer on top of their high bid. The Trustee also requests authority to reimburse LastBid its marketing expenses not to exceed \$1,200.

In connection with the proposed sale, the Trustee requests the Court enter an order: (i) confirming the sale to the highest bidder at the auction (or the next highest bidder should the highest bidder not close); (ii) authorizing the Trustee to pay costs of sale, including a buyer's premium and up to \$1,200 in costs due to LastBid, escrow fees, title fees and transfer taxes; (iii) authorizing the Trustee to pay the real property taxes; (iv) authorizing the Trustee to execute any and all documents that may be necessary to consummate the sale; (v) authorizing the Trustee to pay estimated taxes to the California Franchise Tax Board, if any; and (vi) waiving the fourteen-day stay prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has articulated sound business justification for the sale. The Trustee

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CONT... Joseph J. Forman

Chapter 7

states that the costs of sale will be reasonable as the buyer's premium (broker's commission) will be paid by the buyer and that the sale will result in net equity for the estate. Miller Decl., ¶ 12.

The sale may proceed free and clear of all liens, claims, interests and encumbrances under § 363(f). Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

The Court finds that the sale may proceed free and clear of all liens, claims and encumbrances pursuant to section 363(f)(2) because all interested parties received notice of the Sale Motion, did not oppose the motion, and are deemed to have consented to the sale. The Court also finds that the sale may proceed free and clear pursuant to section 363(f)(3) as to the only known lienholder, because based upon the Trustee's review of a Preliminary Title Report, the minimum sale price exceeds the only lien on the Property. Miller Decl., ¶ 12.

The Trustee is authorized to coordinate with LiveBid to conduct a live internet Auction of the Property on February 19, 2019, to execute any and all documents that may be necessary to consummate the sale, and to pay the costs of sale, including the buyer's premium and up to \$1,200 to LastBid, escrow fees, title fees, transfer taxes, real property taxes, and any Franchise Tax Board fees.

To facilitate the sale, the fourteen-day stay prescribed by Bankruptcy Rule 6004(h) is waived.

III. Conclusion

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For the reasons set forth above, the Sale Motion is GRANTED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Joseph J. Forman

Represented By
Steven B Lever

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-23958 Peter Barajas and Maria Guadalupe Castillo

Chapter 7

#4.00 Hearing
RE: [12] Motion to Redeem Property of the Estate 2013 BMW X5 with proof of service

Docket 12

***** VACATED *** REASON: Order approving stipulation resolving motion entered 1/23/19 [Doc. No. 18]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter Barajas

Represented By
D Justin Harelik

Joint Debtor(s):

Maria Guadalupe Castillo

Represented By
D Justin Harelik

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, February 5, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#5.00 HearingRE: [870] Motion RE: Objection to Claim Number by Claimant Alhambra Park, LLC. Plan Administrator's Objection to Claim Scheduled for Alhambra Park, LLC; Declaration of Erin Gray in Support Thereof

Docket 870

Tentative Ruling:

2/4/2019

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and the Alhambra Claim is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plain Administrator's Objection to Claim Scheduled for Alhambra Park, LLC [Doc. No. 870] (the "Claim Objection")
 - a) Notice Objection to Claim [Doc. No. 871]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

On June 18, 2018, the Court confirmed the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Plan," and the order confirming the Plan,

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the "Confirmation Order"). *See* Doc. No. 609, Ex. A (the Plan) and Doc. No. 665 (the Confirmation Order). The Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of Liberty's estate.

B. The Alhambra Claim

According to the Statement of Information on file with the California Secretary of State, Alhambra Park, LLC ("Alhambra") is a California limited liability company with one managing member, Shumei Kam ("Kam"). Liberty's Schedule D provides that Alhambra holds an undisputed claim in the amount of \$200,000 (the "Alhambra Claim"), secured by property located at 1020 S. Baldwin Avenue, Arcadia, CA (the "Baldwin Property").

C. The Sale of the Baldwin Property

On October 4, 2017, the Court authorized Liberty to sell the Baldwin Property to South Lake 12, LLC for \$10 million. *See* Doc. No. 423 (the "Sale Motion") and Doc. No. 455 (the "Sale Order"). The Sale Order provided that the sale was free and clear of interests asserted by Shanghai Commercial Bank, Ltd., Blue Sky Communications, Huesing Holdings, LLC, and the Los Angeles County Tax Collector, with such interests to attach to the sale proceeds with the same validity and priority as they had prepetition. The Sale Order further provided that the sale was free and clear of all other interests.

The Sale Motion was served upon Kam, Alhambra's managing member, at her regular place of employment. Neither Kam or Alhambra objected to the Sale Motion. The Sale Order provides that "[t]hose holders of Interests against the Debtor, its estate, or any of the Property who did not object to the [Sale Motion] and the sale of the Property are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code." Sale Order at ¶S.

D. Summary of the Plan Administrator's Claim Objection

The Plan Administrator makes the following arguments in support of the Claim Objection:

Pursuant to § 1111(a), a claim is "deemed filed" if scheduled by the debtor, unless scheduled as disputed, contingent, or unliquidated. Alhambra is deemed to have filed a proof of claim based on Liberty's Schedule D, which listed Alhambra's claim and did not indicate that the claim was disputed, contingent, or unliquidated. However,

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even where the debtor schedules the claim, upon objection, it is the claimant's burden to establish the validity of its claim. *See In re 333 Main, LLC*, 2014 Bankr. LEXIS 2237, at *14–15 (Bankr. D. Conn. May 29, 2014) ("Scheduling a claim as undisputed in a chapter 11 case merely allows a proof of claim to be deemed file for purposes of the claims allowance process. The 'deemed filed' language of § 1111(a) does not eliminate the objection mechanism in the claims allowance process.... [U]pon the filing of the Claims Objections, the Schedule F Creditors would have the burden of proving the bona fides of their claims. To hold otherwise would allow those claims to be allowed by default.").

Alhambra has not carried its burden of showing that it holds a valid claim. The books and records that Liberty provided to the Plan Administrator contain no record of any liability to Alhambra, secured or unsecured. The Preliminary Title Report obtained in connection with the Sale Motion does not reflect a lien in favor of Alhambra on the Baldwin Property. The Plan Administrator does not have any information or documentation establishing an unrecorded lien.

Even if Alhambra had a lien of some sort, the Baldwin Property was sold free and clear of that lien. The Sale Order makes clear that the Baldwin Property was sold free and clear of all liens and interests, with only the interests of Shanghai Commercial Bank, Ltd., Blue Sky Communications, Huesing Holdings, LLC, and the Los Angeles County Tax Collector attaching to the sale proceeds. Furthermore, Liberty gave notice of the Sale Motion to Alhambra through Kam and it did not object; therefore, pursuant to ¶¶R and ¶¶S of the Sale Order, Alhambra is deemed to have consented to the sale free and clear of its alleged lien.

No Opposition to the Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules—or a proof of claim that is "deemed filed" because it is scheduled by the debtor—constitutes *prima facie* evidence of the validity and amount of the claim. To overcome this presumption of validity, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000);

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United States v. Offord Finance, Inc. (In re Medina), 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 1111(a) provides that a proof of claim or interest is "deemed filed" if scheduled by the debtor, unless the claim is scheduled as disputed, contingent, or unliquidated. Because Liberty scheduled the Alhambra Claim and did not indicate that the claim was disputed, contingent, or unliquidated, the Alhambra Claim is deemed filed.

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The Plan Administrator has presented facts sufficient to overcome the *prima facie* validity afforded to the Alhambra Claim, shifting the ultimate burden as to the claim's validity back to Alhambra. By failing to respond to the Claim Objection, Alhambra has failed to carry that burden, meaning that the Alhambra Claim must be disallowed.

As shown the Plan Administrator, the Sale Order clearly provided that the Baldwin Property was sold free and clear of Alhambra's lien, and did not contain any language providing that Alhambra's lien attached to the sale proceeds. Because Alhambra received notice of the Sale Motion through its managing member Kam and did not object, Alhambra is deemed to have consented to the sale, and cannot now challenge the effect of the Sale Order upon its alleged lien. As a result of the Sale Order, Alhambra at most holds an unsecured claim. However, as established by the Plan Administrator, Liberty has no records showing any liability to Alhambra, even on an unsecured basis. Therefore, the Court finds that Alhambra's claim must be disallowed in its entirety.

Based upon the foregoing, the Claim Objection is SUSTAINED and the Alhambra Claim is DISALLOWED in its entirety. The Plan Administrator shall submit an order

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incorporating this tentative ruling by reference within seven days of the hearing.

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

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#6.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18; 11-13-18; 1-15-19

Docket 0

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

2/4/2019

Tentative Ruling:

The Court has entered an order continuing this Status Conference to **April 16, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Liberty Asset Management

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

Defendant(s):

HANDING HOLDING Pro Se

TLH REO MANAGEMENT LLC Pro Se

BRADBURY FURLONG LLC Pro Se

OAK RIVER ASSET Pro Se

LIBERTY ASSET MANAGEMENT Represented By
Jeffrey S Kwong
David B Golubchik

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John-Patrick M Fritz
Eve H Karasik

PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

YCJS 2012 LLC	Represented By David S Henshaw
AHA 2012 LLC	Represented By David S Henshaw
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
RICHBEST HOLDING LLC	Pro Se

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

Tuesday, February 5, 2019

Hearing Room 1568

10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#7.00 HearingRE: [165] Motion Notice Of Motion And Motion For Order Approving Payment Of U.S. Trustee Fees From Trust Account; Declaration Of Robert P. Goe In Support Thereof with proof of service

Docket 165

Tentative Ruling:

2/4/2019

The Debtor's Motion – which seeks to pay UST fees from sales proceeds currently held in the Debtor's attorney's client-trust account—is GRANTED in its entirety.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Approving Payment of U.S. Trustee Fees from Trust Account [Doc. No. 165] (the "Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The Debtor's principal asset was a Denny's-franchised restaurant located at 601 Long Beach Blvd., Long Beach, CA 90802 (the "Restaurant"). On December 8, 2017, the Court approved the sale of the Restaurant for \$1,010,000. *See* Doc. No. 57. The sale closed on December 28, 2017.

As of the preparation of the Motion, Debtor's counsel, Goe & Forsythe, LLP ("G&F"), was holding \$207,230.82 in sales proceeds in its client trust account. G&F seeks authorization to pay quarterly fees to the United States Trustee (the "UST") for the fourth quarter of 2018. Fees of \$4,875.00 were due by January 31, 2019.

No opposition to the Motion is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. The Court approves the

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CONT... Beach Dans, Inc.

Chapter 11

payment of the UST fees as requested in the Motion.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#8.00 HearingRE: [173] Application for Compensation First And Final Application For Compensation And Reimbursement Of Expenses Of Goe & Forsythe, LLP, Counsel For Debtor And Debtor In Possession; Memorandum Of Points And Authorities And Declarations Of Robert P. Goe And Peter Yoon In Support Thereof with proof of service for Goe & Forsythe, LLP, Debtor's Attorney, Period: 10/13/2017 to 2/5/2019, Fee: \$103,192.00, Expenses: \$1,152.92.

Docket 173

Tentative Ruling:

2/4/2019

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

Fees: \$103,192

Expenses: \$1,152.92

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

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

**United States Bankruptcy Court
Central District of California
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10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#9.00 HearingRE: [174] Application for Compensation Application for Payment of Final Fee and or Expenses with proof of service for William Lee & Company, Accountant, Period: to, Fee: \$26,375.00, Expenses: \$0.00.

Docket 174

Tentative Ruling:

2/4/2019

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

Fees: \$26,375

Expenses: \$0.00

The Court notes that Applicant failed to sign its Fee Application [Doc. No. 174]. Applicant is cautioned that failure to sign declarations authenticating Applicant's timesheets in the future may result in complete denial of its fees.

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

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe

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Beach Dans, Inc.

Charity J Manee

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10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#10.00 HearingRE: [176] Motion to Dismiss Debtor Debtor's Notice of Motion and Motion to Dismiss Chapter 11 Case and Make Final Distributions to Creditors; Memorandum of Points and Authorities and Declaration of Peter Yoon in Support Thereof with Proof of Service

Docket 176

Tentative Ruling:

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

Pleadings Filed and Reviewed

1. Debtor's Notice of Motion and Motion to Dismiss Chapter 11 Case and Make Final Distributions to Creditors [Doc. No. 176] (the "Dismissal Motion")
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The Debtor's principal asset was a Denny's-franchised restaurant located at 601 Long Beach Blvd., Long Beach, CA 90802 (the "Restaurant"). On December 8, 2017, the Court approved the sale of the Restaurant for \$1,010,000. *See* Doc. No. 57. The sale closed on December 28, 2017. Since that time, the Debtor has resolved and paid all secured, administrative and priority claims.

The Debtor has concurrently filed applications for final approval of professional and united states trustee fees. After payment of administrative claims, the Debtor will have approximately \$44,896.14 in remaining funds that it can immediately disburse to general unsecured creditors on a pro-rata basis. As a result, the Debtor seeks authority to make those disbursements and an order dismissing this case pursuant to section 1112(b)(1) on the grounds that no further purpose would be served by keeping this case open.

No opposition to the Dismissal Motion is on file.

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Chapter 11

II. Findings of Fact and Conclusions of Law

Section 1112(b)(1) provides, in relevant part:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

The Court finds that the Debtor has standing to bring a motion to dismiss, since it is a "party in interest" 11 U.S.C. § 1109(b). Based upon the representations of the Debtor that no further purpose would be served by keeping this case open, the Court finds that cause exists to dismiss this case under section 1112(b)(1).

The Debtor is authorized to make final distributions to creditors.

III. Conclusion

For the reasons set forth above, the Dismissal Motion is GRANTED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

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Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

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Wednesday, February 6, 2019

Hearing Room 1568

10:00 AM

2:18-13712 Chong Sang Tak

Chapter 7

Adv#: 2:18-01217 Trujillo v. Tak et al

**#1.00 Show Cause Hearing
RE: [1] Why The Court Should Not Strike Defendant's Answer And Enter His
Default, Based Upon Defendant's Failure To Cooperate With Plaintiff In
Scheduling Mediation**

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chong Sang Tak Pro Se

Defendant(s):

Chong Sang Tak Pro Se

In Og Tak Pro Se

Gangnam Pizza, Inc. Pro Se

Does 1 Through 50, Inclusive Pro Se

Chong Sang Tak Pro Se

Plaintiff(s):

Celia Bryann Trujillo Represented By
Christine Y Ham

Trustee(s):

Sam S Leslie (TR) Pro Se

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10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#2.00 Hearing
RE: [221] Motion to Reject Lease or Executory Contract (Copier Lease with Canon Financial)

fr. 1-23-19

Docket 221

Tentative Ruling:

2/5/2019

For the reasons set forth below, the Rejection Motion is GRANTED and the Debtor is authorized to reject the Copier Lease as of December 20, 2018.

Pleadings Filed and Reviewed

1. Debtor's Motion for Order Approving Rejection of Unexpired Copier Lease [Doc. No. 221] (the "Rejection Motion")
2. Notice of Hearing on Debtor's Motion for Order Approving Rejection of Unexpired Copier Lease [Doc. No. 222]
3. Order (1) Approving Stipulation to Extend Deadline for the United States Trustee to Object to Fee Applications and (2) Continuing All January 23, 2019 Hearings [Doc. No. 242]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and debtor in possession, Sultan Financial Corporation (the "Debtor") filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). On November 12, 2018, the Debtor closed on the sale of substantially all of its operating assets to Aarons' Inc. As a result, the Debtor is in the process of winding up its business and seeking dismissal of this case.

To facilitate the wind-up process, the Debtor seeks an order authorizing it to reject

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CONT... **Sultan Financial Corporation**

Chapter 11

its unexpired lease with Canon Financial Services, Inc. for a copier (the "Copier Lease"), effective December 20, 2018, pursuant to section 365(a). The Debtor states that it entered into the Copier Lease on March 24, 2015, and that the lease runs through March 23, 2020. The monthly rent payment is \$247 plus tax. The Debtor submits that rejecting the Copier Lease will avoid the continuing imposition of administrative claims for rent or adequate protection against the Debtor's estate.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 365(a), a debtor in possession "may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A bankruptcy court's hearing on a motion to reject is a summary proceeding that involves only a cursory review of a [debtor's] decision to reject the contract." *Durkin v. Benedor Corp. (In re G.I Indus.)*, 204 F.3d 1276, 1282 (9th Cir. 2000). "Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor's] rejection decision." *Id.* A court should approve the rejection decision unless it finds that the debtor's conclusion that rejection would be advantageous is so "manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (internal citation omitted).

In light of the Debtor's sale of substantially all of its assets to Aaron's Inc., and efforts to wind-up this case, the Court finds that the Debtor has articulated a sound business judgment to reject the Copier Lease. Pursuant to Local Bankruptcy Rule 9013-1(h), Canon Financial Services, Inc., is deemed to have consented to the granting of the Rejection Motion.

III. Conclusion

For the reasons set forth above, the Rejection Motion is GRANTED and the Debtor is authorized to reject the Copier Lease as of December 20, 2018.

The Debtor is directed to lodge a conforming proposed order, incorporating this

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tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#3.00 Hearing
RE: [224] Motion to Reject Lease or Executory Contract (unexpired postage meter lease)

fr. 1-23-19

Docket 224

Tentative Ruling:

2/5/2019

For the reasons set forth below, the Rejection Motion is GRANTED, subject to the Debtor filing a declaration confirming that Pitney Bowes received actual notice of the Rejection Motion or demonstrating that its service on the Customer Service Department complies with Rule 7004(b)(3).

Pleadings Filed and Reviewed

1. Debtor's Motion for Order Approving Rejection of Unexpired Postage Meter Lease [Doc. No. 224] (the "Rejection Motion")
2. Notice of Hearing on Debtor's Motion for Order Approving Rejection of Unexpired Postage Meter Lease [Doc. No. 225]
3. Order (1) Approving Stipulation to Extend Deadline for the United States Trustee to Object to Fee Applications and (2) Continuing All January 23, 2019 Hearings [Doc. No. 242]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and debtor in possession, Sultan Financial Corporation (the "Debtor") filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). On November 12, 2018, the Debtor closed on the sale of substantially all of its operating assets to Aarons' Inc. As a result, the Debtor is in the process of winding up its business and seeking dismissal of this case.

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To facilitate the wind-up process, the Debtor seeks an order authorizing it to reject its unexpired lease with Pitney Bowes Global Financial Services LLC ("Pitney Bowes") for a postage meter, Contract #0030087380 (the "Postage Meter Lease"), effective December 21, 2018, pursuant to section 365(a). The Debtor states that it entered into the Postage Meter Lease on March 24, 2015. The Debtor submits that rejecting the Postage Meter Lease will avoid the continuing imposition of administrative claims for rent or adequate protection against the Debtor's estate.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A. The Proof of Service Does Not Reflect Proper Service on Pitney Bowes

Bankruptcy Rules 6006(a), 9014(b) and 7004(b)(3) require the Debtor to serve the Rejection Motion on Pitney Bowes "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). The proof of service does not reflect service on Pitney Bowes as required by Rule 7004(b)(3). Although the Debtor served Pitney Bowes to the attention of "Customer Service Department," there is nothing in the record for this Court to conclude that service on the customer service department resulted in actual service on Pitney Bowes.

Accordingly, together with the lodging of an order granting the Rejection Motion, the Debtor is directed to file a declaration confirming that Pitney Bowes received actual notice of the Rejection Motion or demonstrating that its service on the Customer Service Department complies with Rule 7004(b)(3).

B. Lease Rejection

Under 11 U.S.C. § 365(a), a debtor in possession "may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A bankruptcy court's hearing on a motion to reject is a summary proceeding that involves only a cursory review of a [debtor's] decision to reject the contract." *Durkin v. Bendor Corp. (In re G.I Indus.)*, 204 F.3d 1276, 1282 (9th Cir. 2000).

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"Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor's] rejection decision." *Id.* A court should approve the rejection decision unless it finds that the debtor's conclusion that rejection would be advantageous is so "manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (internal citation omitted).

In light of the Debtor's sale of substantially all of its assets to Aaron's Inc., and efforts to wind-up this case, the Court finds that the Debtor has articulated a sound business judgment to reject the Postage Meter Lease as of December 21, 2018.

III. Conclusion

For the reasons set forth above, the Rejection Motion is GRANTED, subject to the Debtor filing a declaration re service as set forth above.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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2:18-18021 Sultan Financial Corporation

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#4.00 Hearing
RE: [229] Application for Compensation for Thompson Coburn LLP, Debtor's Attorney, Period: 7/13/2018 to 11/29/2018, Fee: \$341,607.50, Expenses: \$12,610.68.

fr. 1-23-19

Docket 229

Tentative Ruling:

2/5/2019

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

Fees: \$338,607.50 [After deducting \$3,000 pursuant to Applicant's stipulation with the U.S Trustee. *See* Doc. Nos. 244, 248]

Expenses: \$12,610.68

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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David A Warfield
Mark S Horoupian
Richard G Reinis

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#5.00

Hearing

RE: [230] Application for Compensation for Dady & Gardner P.A., Special Counsel, Period: 7/13/2018 to 8/31/2018, Fee: \$23,144.13, Expenses: \$1,994.21

fr. 1-23-19

Docket 231

Tentative Ruling:

2/5/2019

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

Fees: \$20,955.38 [After deducting \$2,188.75 pursuant to Applicant's stipulation with the U.S Trustee. *See* Doc. Nos. 245, 249]

Expenses: \$1,994.21

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By

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Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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#6.00 Hearing
RE: [231] Application for Compensation for Martini Akpovi Partners LLP,
Accountant, Period: 8/19/2018 to 10/31/2018, Fee: \$43,898.90, Expenses:
\$451.60.

fr. 1-23-19

Docket 231

Tentative Ruling:

2/5/2019

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

Fees: \$43,898.90

Expenses: \$451.60

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

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

Fees: \$20,955.38 [After deducting \$2,188.75 pursuant to Applicant's stipulation with the U.S Trustee. *See* Doc. Nos. 245, 249]

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Expenses: \$1,994.21

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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2:18-18021 Sultan Financial Corporation

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#7.00 Hearing
RE: [227] Motion to Dismiss Debtor Debtors Motion For Entry Of An Order
Dismissing Chapter 11 Case

fr. 1-23-19

Docket 227

Tentative Ruling:

2/5/2019

For the reasons set forth below, the Motion is GRANTED and the case is dismissed.

Pleadings Filed and Reviewed

1. Debtor's Motion for Entry of an Order Dismissing Chapter 11 Case [Doc. No. 227] (the "Motion")
2. Order (1) Approving Stipulation to Extend Deadline for the United States Trustee to Object to Fee Applications and (2) Continuing All January 23, 2019 Hearings [Doc. No. 242]
3. Limited Objection of Zions Bancorporation, N.A., dba California Bank & Trust to Debtor's Motion for Entry of Order Dismissing Chapter 11 Case [Doc. No. 250] (the "Limited Objection")
4. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Debtor and debtor in possession, Sultan Financial Corporation (the "Debtor") filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). On November 12, 2018, the Debtor closed on the sale of substantially all of its operating assets to Aarons' Inc (the "Aaron's Sale"). The total purchase price paid at closing went directly to Zions Bancorporation, N.A. dba California Bank & Trust ("CB&T") in partial satisfaction of its claim against the Debtor. As a result, the Debtor has no remaining assets other than: (a) approximately \$474,550 in cash and receivables, and

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(b) a right to receive contingent and unliquidated amounts from Millennium Insurance Company, Ltd. ("Millennium"). The amounts due from Millennium include payment for the Debtor's equity interest in Millennium, which would not be paid until all remaining open workers compensation claims have been satisfied or sufficiently reserved for, which the Debtor anticipates will occur in 2023 (the "Millennium Asset"). The amounts due from Millennium are subject to CB&T's security interest.

Based on the foregoing, the Debtor seeks an order dismissing this case. The Debtor states that its current financial condition and lack of any meaningful business or assets prohibits it from remaining in chapter 11 and preparing and soliciting a plan of reorganization. The Debtor further states that it is administratively insolvent and anticipates terminating the employment of its two remaining employees shortly. The Debtor attached a summary of its current financial position as Exhibit 1 to the Declaration of Randall C. Sultan. Accordingly, the Debtor submits that cause exists to dismiss this case.

Additionally, the Debtor asserts that dismissal, rather than conversion, is in the best interest of the estate and creditors. The Debtor contends that conversion to chapter 7 will not benefit creditors and will only result in reducing the estate's ability to pay existing administrative expenses.

CB&T filed a limited objection. CB&T states that as part of the Aaron's Sale, the Debtor committed to pay \$300,000 at closing to CB&T provided that such payment did not render the Debtor administratively insolvent. CB&T acknowledges that the estate is administratively insolvent but contends that the Millennium Asset has an estimated current value of \$650,000 and estimates the value of the Debtor's residual cash value of its equity interest could be as much as \$400,000. CB&T highlights that the Debtor does not dispute that CB&T is entitled to all residual net cash of the estate, include the Millennium Asset. CB&T further states that it is engaging in ongoing discussions with Debtor's counsel to address and resolve these issues prior to the hearing on the Debtor's motion to dismiss. However, out of an abundance of caution, CB&T files this limited objection to preserve the issue respective its interest in the Millennium Asset. CB&T contends that the dismissal order should clearly indicate that CB&T is entitled to payment of the remaining funds with Millennium and directing Millennium to pay the payment directly to CB&T following the close of the respective claims period.

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As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

Section 1112(b)(1) provides, in relevant part:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

The Court finds that the Debtor has standing to bring a motion to dismiss, since it is a "party in interest" 11 U.S.C. § 1109(b). The Court further finds that the Debtor has established sufficient cause to dismiss this case pursuant to sections 1112(b)(4)(A) and (M) on the grounds that remaining in chapter 11 will result in continuing loss and diminution to the estate without a reasonable likelihood of rehabilitation because the Debtor is unable to propose, confirm or consummate a plan of reorganization.

On the record before it, the Court finds that no purpose would be served by converting this case to a case under chapter 7 and that, in fact, administrative claimants would be harmed by conversion. Accordingly, the Court finds it in the best interests of creditors and the estate to dismiss this case.

CB&T's limited objection is sustained. The Debtor does not dispute that CB&T holds a security interest in the Millennium Asset. Accordingly, the Debtor should include a provision in the dismissal order that preserves CB&T's interest in the Millennium Asset and directs payment to be made directly to CB&T.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED and the case is dismissed.

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The Debtor and CB&T are directed to lodge a mutually agreeable proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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2:18-18021 Sultan Financial Corporation

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#8.00 Status conference re chapter 11 case

FR. 7-17-18; 8-8-18; 10-10-18; 11-7-18; 12-12-18

fr. 1-23-19

Docket 4

Tentative Ruling:

2/5/2019

See Calendar No. 7, incorporated herein by reference.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#9.00 Show Cause Hearing RE: [1] Chapter 11 Voluntary Petition Non-Individual. Inc. List of Equity Security Holders due 09/26/2018. Summary of Assets and Liabilities (Form 106Sum or 206Sum) due 09/26/2018. Schedule A/B: Property (Form 106A/B or 206A/B) due 09/26/2018. Schedule D: Creditors Who Have Claims Secured by Property (Form 106D or 206D) due 09/26/2018. Schedule E/F: Creditors Who Have Unsecured Claims (Form 106E/F or 206E/F) due 09/26/2018. Schedule G: Executory Contracts and Unexpired Leases (Form 106G or 206G) due 09/26/2018. Schedule H: Your Codebtors (Form 106H or 206H) due 09/26/2018. Declaration Under Penalty of Perjury for Non-Individual Debtors (Form 202) due 09/26/2018. Statement of Financial Affairs (Form 107 or 207) due 09/26/2018. Corporate Resolution Authorizing Filing of Petition due 09/26/2018. Disclosure of Compensation of Attorney for Debtor (Form 2030) due 09/26/2018. Incomplete Filings due by 09/26/2018. (Resnik, Matthew)

Docket 1

Tentative Ruling:

2/5/2019

No appearances required. This is a hearing on the Court's *Order Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed or Converted* [Doc. No. 56] (the "OSC"). The Court has reviewed the Debtor's response [Doc. No. 61] and, based thereon, finds it appropriate to discharge the OSC.

The deadline for the Debtor to file a chapter 11 plan of reorganization and disclosure statement is **February 22, 2019**. The Debtor shall have through and until **May 24, 2019** to obtain confirmation of a chapter 11 plan. If Debtor fails to timely comply with the foregoing deadlines, the Court will convert or dismiss this case without further notice or hearing.

After the hearing, the Court will prepare an order discharging the OSC.

Party Information

Debtor(s):

United International Mortgage

Represented By
Matthew D. Resnik

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United International Mortgage Solutions, Inc.

Roksana D. Moradi-Brovia

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2:18-20151 Verity Health System of California, Inc.

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#10.00 HearingRE: [1279] Motion and Notice of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof

Docket 1279

Tentative Ruling:

2/5/2019

For the reasons set forth below, the Bidding Procedures Motion is GRANTED, except that the Court will approve a Breakup Fee of only 3.0%, and the Court finds that certain of the termination rights granted to SGM in the APA are unduly broad.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 1279] (the "Bidding Procedures Motion")
- 2) Opposition Papers:
 - a) Limited Objection and Reservation of Rights of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to [Bidding Procedures Motion] [Doc. No. 1346]
 - b) Reservation of Rights of U.S. Bank, N.A. [Doc. No. 1347]

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- c) Objection of Cigna Entities to [Bidding Procedures Motion] [Doc. No. 1349]
- d) Limited Objection to [Bidding Procedures Motion] [filed by UnitedHealthcare Insurance Company] [Doc. No. 1351]
- e) [California] Attorney General's Opposition to [Bidding Procedures Motion] [Doc. No. 1352]
- f) Creditor California Department of Health Care Services's Objection to [Bidding Procedures Motion] [Doc. No. 1353]
- g) SEIU-UHW's Objection and Reservation of Rights as to [Bidding Procedures Motion] [Doc. No. 1354]
- h) IUOE, Stationary Engineers Local 39's Reservation of Rights Regarding [Bidding Procedures Motion] [Doc. No. 1355]
- i) Response and Reservation of Rights to Motion to Sell Asset and for Related Relief [filed by UMB Bank, N.A.] [Doc. No. 1357]
- j) Reservation of Rights of MGH Painting, Inc., Holder of a Mechanic's Lien Against St. Vincent Medical Center, in Connection with [Bidding Procedures Motion] [Doc. No. 1358]
- k) California Nurses Association Objection to [Bidding Procedures Motion] [Doc. No. 1359]
 - i) Declaration of Kyrsten B. Skogstad in Support of Objection [Doc. No. 1360]
- l) Limited Objection and Reservation of Rights of San Mateo County & Health Plan of San Mateo Re Debtors' [Bidding Procedures Motion] [Doc. No. 1361]
 - i) Proof of Service [Doc. No. 1383]
- m) Limited Opposition of Belfor USA Group, Inc. to Debtors' Bidding Procedures Motion [Doc. No. 1364]
- n) Limited Objection and Reservation of Rights of St. Vincent IPA Medical Corporation & Angeles IPA Re Debtors' [Bidding Procedures Motion] [Doc. No. 1388]
- o) UNAC's Limited Objection and Reservation of Rights Regarding [Bidding Procedures Motion] [Doc. No. 1395]
- p) Opposition to the Debtors' [Bidding Procedures Motion filed by Hooper Healthcare Consulting LLC] [Doc. No. 1397]
- q) Official Committee of Unsecured Creditors' Limited Objection to [Bidding Procedures Motion] [Doc. No. 1399]
 - i) Declaration of Cynthia A. Nelson in Support of Official Committee of Unsecured Creditors' Limited Objection to SGM Sale Motion [Doc. No.

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- ii) Request for Judicial Notice [Doc. No. 1402]
 - iii) Proof of Service [Doc. No. 1410]
 - iv) Joint Supplement to Objection and Response to Debtors' Sale Motion [Doc. No. 1460]
- 3) Reply Papers:
- a) Debtors' Omnibus Reply to Objections to Debtors' Bid Procedures Motion by (I) U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services, and (II) California Department of Health Care Services [Doc. No. 1438]
 - b) [Debtors'] Reply to California Attorney General's Opposition [to Bidding Procedures Motion] [Doc. No. 1442]
 - c) Reply of Strategic Global Management, Inc. to Objections to [Bidding Procedures Motion] [Doc. No. 1444]
 - d) [Debtors'] Omnibus Reply [Doc. No. 1448]
 - e) [Debtors'] Omnibus Reply to Union Objections [Doc. No. 1449]
 - i) Objection to Declaration of Kyrsten B. Skogstad [Doc. No. 1450]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors seek approval of procedures governing the sale of St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center ("St. Vincent"), St. Vincent Dialysis Center ("St. Vincent Dialysis"), Seton Medical Center ("Seton"), Seton Medical Center Coastside ("Seton Coastside"), and related assets (collectively, the "Hospitals"). See Doc. No. 1279 (the "Bidding Procedures Motion"). Pursuant to an Asset Purchase Agreement (the "APA") dated January 8, 2019, Strategic Global Management ("SGM") has agreed to serve as the stalking horse bidder.

A. Proposed Bidding Procedures and Material Terms of the APA

Under the APA, the proposed purchase price is approximately \$610 million (the "Cash Consideration"), with \$420 million allocated to St. Francis, \$120 million allocated to St. Vincent, and \$70 million allocated to Seton and Seton Coastside

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combined, plus the payment of cure costs associated with the assumption and assignment of executory contracts and unexpired leases. APA at § 1.1(1)(i). The proposed breakup fee (the "Breakup Fee") is 3.5% of the Cash Consideration, or \$21.35 million, plus reimbursement of reasonably documented costs and expenses in an amount not to exceed \$2 million. SGM has made a good-faith deposit in the amount of \$30 million.

The APA contemplates that the Debtors will seek the review and approval of the California Attorney General (the "Attorney General") as to the sale. If the Attorney General's review results in the imposition of certain types of conditions, SGM may terminate the transaction:

Purchaser [SGM] recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the [Attorney General]. Purchaser [SGM] agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the [Attorney General] are substantially consistent with the conditions set forth in Schedule 8.6. In the event the [Attorney General] imposes conditions on the transactions contemplated by this Agreement which are not as set forth on Schedule 8.6 (the "Additional Conditions"), Sellers [the Debtors] shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order finding that the Additional Conditions are an "interest in property" for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions. If Sellers obtain such an order, from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order to determine, in Purchaser's sole and absolute discretion, and in consultation with Purchaser's financing sources, whether to proceed to consummate the transactions contemplated by this Agreement. If Purchaser [SGM] determines not to proceed, Purchaser [SGM] shall have the right to terminate this Agreement and receive the return of its Good Faith Deposit.

APA at § 8.6.

Under the proposed bidding procedures, bidders may submit bids for a subset of the Hospitals (a "Partial Bid") or for all of the Hospitals (a "Full Bid"). If the Debtors receive one or more Partial Bids, they will conduct separate auctions of each asset or combination thereof (each, a "Partial Bid Auction"). The Partial Bid Auction(s) will

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be conducted at the Debtors' offices on April 8, 2019. If the Debtors receive one or more Full Bids, the Debtors will conduct the Full Bid Auction at the Debtors' offices on April 9, 2019. In the event that no qualifying bids are received, no auction will be conducted and SGM will be named the successful bidder.

The proposed bidding procedures authorize SGM to terminate the transaction if qualified Partial Bids are received but no qualified Full Bids are received:

If the Partial Bids do not include all four APA Facilities, and if there are no other qualified full bids, then Seller, in its discretion, will either choose (1) to have no auction and the Stalking Horse Purchaser will purchase the four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and Consultation Parties deem the aggregate Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the "Remaining Facility"), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (ii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

Bidding Procedures (APA, Schedule 6.1(b)(3)) at § II.H(b).

The APA requires that the Hospitals be transferred to SGM free and clear of collective bargaining agreements ("CBAs"), but expressly notes that the Debtors will not be in breach for failing to obtain any modification or rejection of an existing CBA. APA at §§ 1.7 and 4.7.

The proposed bidding procedures authorize the Debtors to employ and announce additional procedural rules at the auction, provided that the Debtors first consult with SGM, the Official Committee of Unsecured Creditors (the "Committee"), the Prepetition Secured Creditors, and any other party deemed appropriate within the business judgment of the Debtors. [Note 1]

B. Proposed Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases

The Debtors propose the following procedures with respect to the assumption and assignment of executory contracts and unexpired leases:

- 1) The Debtors will seek to assume and assign certain executory contracts and

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unexpired leases to be identified in the Purchase Agreements (collectively, the "Assumed Executory Contracts"). (For simplicity, as used hereafter, the term "executory contract" means an executory contract and/or an unexpired lease, as the context requires.)

- 2) The Assumed Executory Contracts will be those contracts and leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the Hospitals. The Successful Bidder(s) may choose to exclude (or add) certain executory contracts to the list of Assumed Executory Contracts, subject to further notice.
- 3) The Debtors will provide all executory contract counterparties notice of whether their contract is to be assumed and assigned to the Successful Bidder(s) within 48 hours of the conclusion of the Full Bid Auction. The Debtors, however, cannot give assurance that such notice will be irrevocable, as the Debtors cannot predict whether the Successful Bidder's transaction will be approved by the Court or will survive potential litigation with the Attorney General.
- 4) On March 5, 2019, the Debtors will serve a cure notice (the "Cure Notice") upon counterparties to the Assumed Executory Contracts. The Cure Notice will advise the counterparties of the date and time of the hearing to approve the sale of the Hospitals (the "Sale Hearing") (April 17, 2019, at 10:00 a.m.), as well as the deadline to object to the sufficiency of the Cure Amount (March 22, 2019, at 4:00 p.m.). The Cure Notice will further advise counterparties of the deadline to assert an objection to assumption and assignment, other than an objection based on the sufficiency of the Cure Amount (April 12, 2019, at 4:00 p.m.).

C. Proposed Significant Dates

The Debtors propose the following timetable with respect to the auction (all times are local prevailing time):

- 1) Service of Notice of Sale Hearing: March 1, 2019.
- 2) Service of Assumption and Cure Notice: March 5, 2019.
- 3) Deadline for Executory Contract Counterparties to Object to the Sufficiency of the Cure Amount (as to counterparties who were served the Assumption and Cure Notice on March 5, 2019): March 22, 2019, at 4:00 p.m.
- 4) Partial Bid Deadline: March 28, 2019, at 4:00 p.m.

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- 5) Full Bid Deadline: April 3, 2019, at 4:00 p.m.
- 6) Partial Bid Auction: April 8, 2019, at 10:00 a.m.
- 7) Full Bid Auction: April 9, 2019, at 10:00 a.m.
- 8) Notice of Results of Auction and filing of Memorandum Supporting the Sale: April 10, 2019, at 10:00 a.m.
- 9) Service of Notice of Executory Contracts to be Assumed and Assigned: April 11, 2019, at 10:00 a.m.
- 10) Sale Objection Deadline: April 12, 2019, at 4:00 p.m.
- 11) Deadline for Executory Contract Counterparties to Assert Objections Other than An Objection to the Sufficiency of the Cure Amount: April 12, 2019, at 4:00 p.m.
- 12) Reply Deadline: April 15, 2019, at 4:00 p.m.
- 13) Sale Hearing: April 17, 2019, at 10:00 a.m.

D. Summary of the Objections Filed to the Bidding Procedures Motion and the Debtors' Replies in Support of the Motion

The objections to the Bidding Procedures Motion, and the Debtors' reply to each objection, are summarized below. (Certain objections have been resolved; only unresolved objections are discussed herein.)

1. Objections of the Committee and the Prepetition Secured Creditors [Doc. Nos. 1399, 1401, 1402, and 1460]

The Committee asserts that certain of the bidding protections afforded to SGM (the "Bid Protections") are not consistent with applicable precedent and market terms and practice, and will not yield optimal value for the estate. The Committee's specific objections are as follows:

- 1) The Breakup Fee of \$21.35 million, or 3.5% of the Cash Consideration, is not necessary to garner SGM's participation in the auction. In 2014, the Debtors' predecessor attempted to sell the Hospitals. SGM, Prime Healthcare Services, Inc. ("Prime") and Prospect Medical Holdings, Inc. ("Prospect") all participated in the auction. Given the high level of interest exhibited in the 2014 auction, the 3.5% Breakup Fee is excessive. The Breakup Fee should be reduced to 3% of the Cash Consideration, or \$18.3 million. The cases cited by the Debtors involving an equal or higher breakup fee are inapposite, because the transactions in each of those cases were much smaller.

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- 2) In the case of *In re Promise Healthcare Group LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Dec. 4, 2018), SGM agreed that it was appropriate to limit the amount of a break-up fee. In that case, SGM argued that aggregate Bid Protections amounting to 5.4% of the nominal purchase price were excessive. SGM asserted that a 3% break-up fee was appropriate. Since a 3% break-up fee is all that SGM thought was necessary to facilitate the sale of the Los Angeles Downtown Medical Center in *Promise Healthcare*, no more should be necessary for SGM to serve as the Stalking Horse Bidder in this case.
- 3) The Bidding Procedures authorize SGM to terminate the transaction if Partial Bids are received but no Full Bids are received. SGM should be required to remain the Stalking Horse Bidder until the conclusion of the auction.
- 4) The Bidding Procedures do not require SGM to act as a Backup Bidder in connection with a sale of fewer than all four of the Hospitals. The Bidding Procedures should require SGM to serve as the Backup Bidder in the event of a Partial Bid Auction.
- 5) The Bidding Procedures require the Debtors to consult SGM with respect to any additional procedural rules employed at the auction. This consultation right gives SGM a greater voice regarding the conduct of the auction and could chill bidding, as other bidders might believe that SGM could tilt the rules in its favor.
- 6) SGM should not have the right to terminate the transaction if, in response to the imposition of additional conditions by the Attorney General, the Debtors seek and obtain an order authorizing the sale of the Hospitals free and clear of such additional conditions.

The Prepetition Secured Creditors assert substantially similar objections to the Bidding Procedures as the Committee.

The Debtors reply to the objections asserted by the Committee and the Prepetition Secured Creditors as follows:

- 1) The 3.5% Breakup Fee was necessary to incentivize SGM to perform the requisite due diligence to submit an opening bid and to enter into a binding contract and to secure financing for a \$610 million transaction. SGM has agreed to purchase multiple hospitals, not just the most attractive ones, and has agreed to a significant cash purchase price.

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- 2) The fact that SGM bid for the Hospitals in 2014 does not warrant a reduction in the Breakup Fee. While SGM may have been familiar with the Hospitals in 2014, the condition of the Hospitals has changed significantly over the past five years.
- 3) In connection with the sale of Saint Louise Regional Medical Center and O'Connor Hospital to the County of Santa Clara, this Court approved a 4% break-up fee. Other Bankruptcy Courts have approved break-up fees of 3.5% or higher. Hence, the 3.5% Breakup Fee sought here is reasonable.
- 4) There is no merit to the contention that SGM's termination rights are too broad or that SGM should be required to serve as the Backup Bidder in connection with a Partial Bid auction. These objections ignore that the Bidding Procedures were a result of an overall compromise on both sides to reach a deal. Parties cannot cherry-pick in isolation various provisions without opening up all of the Bidding Procedures to further negotiation.

SGM asserts that the terms of the APA, including the Breakup Fee, are appropriate. SGM emphasizes the enormously complicated nature of the Hospitals' businesses, and notes that the universe of prospective purchasers for such healthcare facilities, particularly facilities with a history of losses, is small. SGM contends that proceeding with the APA will produce optimal results for all stakeholders.

2. Objections of Entities Who Are Parties to or Benefit from Various Collective Bargaining Agreements with Certain of the Debtors [Doc. Nos. 1354, 1355, 1359, and 1395]

The International Union of Operating Engineers, Stationary Engineers Local 39 ("Local 39"), the Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), the California Nurses Association (the "CNA"), and the United Nurses Association of California/Union of Health Care Professionals ("UNAC") are parties to collective bargaining agreements ("CBAs") with certain of the Debtors. The CBA currently in effect between the Debtors and Local 39 was entered into postpetition; all the other CBAs were entered into prepetition.

The Unions assert that the CBAs prohibit the Debtors from agreeing to the transfer of any of the Hospitals unless the purchaser is required to assume the CBAs. The Unions contend that the Debtors must first comply with the requirements of § 1113 before entering into an APA which contemplates the modification of the CBAs.

The Unions further contend that the proposed bidding procedures do not

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sufficiently incentivize prospective purchasers to assume the CBAs. According to the Unions, the Debtors should be required to provide a quantification of the bidding credit to any bidder who agrees to assume liabilities under the CBAs.

UNAC and CNA challenge the size of the Breakup Fee, raising many of the same arguments as the Committee. CNA asserts that the Breakup Fee is unnecessary given that the Hospitals were previously marketed in 2014.

Debtors dispute the Union's contention that they must obtain relief under § 1113 before proceeding with the sale. Debtors rely upon *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001):

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

Debtors state that they have consistently expressed a preference to all potential buyers that they assume the existing CBAs. With respect to the Unions' request that the Debtors be required to quantify the credit to be afforded to bidders assuming the CBAs, Debtors state that they must be given broad discretion to select the highest and best bid in accordance with their business judgment. Debtors state that providing a specific valuation for the assumption of the CBAs would be unreasonable, burdensome, and bid-chilling, and contend that the provision of such information is unnecessary given the sophistication of the parties participating in the Auction(s).

3. Objection of the County of San Mateo and the Health Plan of San Mateo [Doc. No. 1361]

The County of San Mateo and the Health Plan of San Mateo (collectively, the "San Mateo Objectors") raise an issue with § 5.1(b) of the APA, which provides that

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SGM is permitted to meet and communicate with "applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as ... such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meeting with any governmental authority are approved in advance by Sellers [the Debtors] as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings)." The San Mateo Objectors fear that such language could be construed to restrict the ability of SGM to communicate with the County on matters of interest to the County and its residents.

In response, the Debtors affirm that the restrictions and limitations set forth in § 5.1(b) on communications between SGM and governmental authorities are intended to apply only to communications regarding licensing or regulation of the Hospitals with the relevant licensing or regulatory authorities. Debtor state that the restrictions do not apply to communications involving SGM (or any other prospective buyers) and any governmental authority on subjects unrelated to licensing or regulation by that authority.

4. Objection of Hooper Healthcare Consulting LLC [Doc. No. 1397]

Hooper Healthcare Consulting LLC ("Hooper") provides consulting services to the Debtors to enable the Debtors to maximize their receipt of Hospital Quality Assurance Fees. Hooper asserts that its services have increased the Debtors' receipt of Quality Assurance Fees by \$16.4 million over the past 2.5 years. Hooper receives a monthly consulting fee of \$9,400 for its services, plus 3% of the increased Quality Assurance Fee receipts generated by Hooper's services, up to a maximum of \$500,000 (the "Net Benefit Compensation"). According to Hooper, the Bidding Procedures Motion does not identify whether the Debtors or the successful purchaser is required to pay any Net Benefit Compensation that may come due in the future. Hooper further contends that procedures proposed by the Debtors do not provide it sufficient time to object to the assumption and assignment of its executory contract.

The Debtors maintain that Hooper's objection is premature. The Debtors state that once they have identified the Successful Bidder, they will provide Hooper with notice of how its Net Benefit Compensation will be treated. The Debtors assert that the procedures regarding assumption and assignment are standard for cases of this type and provide counterparties with a sufficient opportunity to protect their rights.

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5. Reservation of Rights of MGH Painting Inc. [Doc. No. 1358] and Limited Opposition of Belfor USA Group, Inc. [Doc. No. 1364]

MGH Painting, Inc. ("MGH Painting") asserts a mechanic's lien in the amount of \$225,000 against St. Vincent. MGH Painting reserves its rights to object at the Sale Hearing in the event it is not satisfied with the proposed treatment of its lien.

Belfor USA Group, Inc. ("Belfor") asserts a mechanic's lien in the amount of \$250,733.03 against St. Vincent. Belfor opposes any sale of St. Vincent free and clear of its lien unless it is paid in full from the sale proceeds.

The Debtors assert that the objections of MGH Painting and Belfor are premature and are more appropriately addressed at the Sale Hearing.

6. Objection of Cigna [Doc. Nos. 1349 and 1459]

The Debtors are parties to various agreements with Cigna Healthcare of California, Inc. ("Cigna CA"), Cigna Health and Life Insurance Company ("CHLIC"), and Life Insurance Company of North America ("LINA," and collective with Cigna CA and CHLIC, "Cigna"). Customers of Cigna receive healthcare services pursuant to various Hospital Services Agreements between the Debtors and Cigna (such agreements collectively, the "Cigna Provider Agreements"). Under various short and long term disability policies (the "LINA Policies"), employees of the Debtors receive group disability benefits.

In its Opposition, Cigna requested that the Bidding Procedures Order contain the following language:

The Debtors shall, no later than the earlier of (i) one business day after the conclusion of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume and assign any or all of the Cigna Provider Agreements as part of the Sale.

Doc. No. 1349 at ¶12.

In their Reply, the Debtors stated that it was not possible to provide, by a date certain, an "irrevocable decision" regarding assumption and assignment, because the Debtors could not know whether the sale would be approved by the Court or would survive litigation with the Attorney General. Cigna filed a Sur-Reply, in which it contends that the Debtors' concerns could be resolved by the following language (additional provisions italicized):

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The Debtors shall, no later than the earlier of (i) one business day after the conclusion of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume and assign any or all of the Cigna Provider Agreements as part of the Sale; *provided, however, that such notice shall be irrevocable only to the extent that the Successful Bidder's transaction is approved by this Court, and the Successful Bidder's transaction survives any potential litigation with the Attorney General of California.*

Doc. No. 1459 at ¶6.

7. Objection of UnitedHealthcare Insurance Company [Doc. No. 1351]

UnitedHealthcare Insurance Company ("UnitedHealthcare") provides health care insurance benefits through group medical policies, and has contracts with St. Francis, St. Vincent, and Seton. UnitedHealthcare requests that the Debtors provide notice of the contracts to be assumed and assigned at least 70 days before the Closing Date.

In Reply, the Debtors state that they will provide notice of the contracts to be assumed on April 11, 2019—two days after the Full Bid Auction concludes on April 9, 2019. The Debtors estimate that the Attorney General's review of the transaction will require at least four months, and contend that the proposed notice is more than adequate.

8. Objection of St. Vincent IPA Medical Corporation and Angeles IPA

St. Vincent IPA Medical Corporation and Angeles IPA (collectively, "St. Vincent IPA") are parties to *Healthcare Services Risk Sharing Agreements* (the "Risk Sharing Agreements") with certain of the Debtors. St. Vincent IPA requests that the Debtors be required to (1) pay in full the undisputed portion of the Cure Amount for an Assumed Executory Contract at the Closing Date, and (2) segregate the disputed portion of the Cure Amount. St. Vincent asserts that such protections are necessary to insure that the Debtors reserve sufficient funds to pay the full Cure Amounts that are ultimately determined.

The Debtors are agreeable to paying out the undisputed Cure Amounts concurrently with the closing of the transaction or as soon thereafter as is possible. However, the Debtors state that it is not administratively feasible for them to segregate the disputed Cure Amounts in the manner requested by St. Vincent IPA.

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The Debtors point out that their cash management system is extremely complex and is subject to deposit account control agreements in favor of Ally Bank, the DIP lender.

9. Objection of the California Attorney General [Doc. No. 1352]

The California Attorney General (the "Attorney General") seeks clarification that the transaction is subject to his review and approval pursuant to Cal. Corp. Code § 5914. The Attorney General objects to the fact that the APA was filed without many of the schedules attached, and requests an opportunity to provide further objections upon disclosure of the schedules. The Attorney General seeks clarification that the Sale Order will carve out the Attorney General's review and approval process, and that Debtors will seek an order under § 363 related to the Attorney General's conditions only after he has completed his review of the transaction under Cal. Corp. Code § 5914.

The Attorney General requests that the Bidding Procedures Order contain the following language:

Nothing in this Order or the Final Asset Purchase Agreement is intended to be or shall be construed as an adjudication of the applicability of the California Attorney General's authority or conditions issued under California Corporations Code section 5914 *et seq.*, in relation to the sale and/or assumed leases of certain of the Debtor's assets The California Attorney General and these listed persons and entities reserve all rights and defenses concerning the applicability of the California Attorney General's Authority or conditions issued under California Corporations Code section 5914 *et seq.*

Nothing in this Order or the Final Asset Purchase Agreement releases, nullifies, precludes or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including, but not limited to, charitable trust laws such as California Corporations Code section 5914 *et seq.*), and any associated liabilities for penalties, damages, cost recovery, or injunctive relief that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or in the Asset Purchase Agreement shall in any way diminish the obligation of any entity, including the Debtor, to comply with charitable trust laws. Nothing in this Order or the Asset Purchase Agreement authorizes the transfer to the Buyer of any licenses, permits, registrations, or governmental authorizations and approvals without

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the Buyer's compliance with all applicable legal requirements under charitable trust laws governing such transfers.

Nothing in this Order or the Final Asset Purchase Agreement shall limit the California Attorney General's right to conduct a full review of any sale pursuant to California Corporations Code sections 5914-5924 including the right to receive the notice and all information to which he is entitled, and to have the prescribed time period of 90 days, and 45-day extension, to Approve; Disapprove; or Approve with conditions a sale under California Corporations Code sections 5914-5924 and California Code of Regulations on Nonprofit Hospital Transactions - Title 11, Chapter 15, section 999 .5.

Doc. No. 1352 at 9–10.

The Debtors assert that the Attorney General's arguments are premature because the ultimate identity of the winning bidder is unknown, meaning that it is unknown whether the sale will even be subject to the Attorney General's review under California law. The Debtors state that several counties have expressed interest in purchasing the Hospitals, in which case the sale would not be subject to the Attorney General's review.

II. Findings and Conclusions

A. Evidentiary Objections

At the outset, the Court addresses the Debtors' evidentiary objections to the Declaration of Kyrsten B. Skogstad, submitted in support of the CNA's objection. The Skogstad Declaration contains documents relating to SGM's proposal to acquire certain of the Hospitals in 2014. The Debtors object to the Skogstad Declaration on the grounds of relevance and hearsay.

The Court will admit the Skogstad Declaration; however, the declaration has only minimal relevance to the Bidding Procedures Motion. SGM's activities in connection with the 2014 sale provide some minimally relevant background information, but nothing more. Significant changes to the Hospitals have occurred in the past five years; what occurred in 2014 is useful only to the extent that it provides historical context.

B. Certain Objections Are Premature and Will Not be Decided in Connection with this Hearing

This hearing involves only the approval of the Bidding Procedures that will be

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used at the auction of the Hospitals. The Court finds that many of the objections are more appropriately considered at the final Sale Hearing, at which point the identity of the successful purchaser will be known. Many objections are based upon hypothetical future events and raise issues that may never ripen.

The Court finds that MGH Painting and Belfor's objections regarding the treatment of the mechanics' liens which they assert to be premature. These objections are preserved for the Sale Hearing and may be raised at that time.

To the extent that the Unions assert that the Debtors are required to reject the CBAs prior to entering into the APA, the Unions' objections are overruled. This ruling does not prevent the Unions from raising objections under § 1113 at the Sale Hearing. However, the Unions' contention that the APA and the associated bidding procedures cannot be approved prior to the adjudication of § 1113 issues is without merit. The decision in *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001) shows that the Debtors are not obligated to reject CBAs prior to the sale of assets. In *Family Snacks*, the debtor filed § 1113 motions only after it had sold its assets. The *Family Snacks* court held that the debtor's decision to not commence negotiations until after the asset sale did not automatically bar the debtor from obtaining relief under § 1113. *Family Snacks*, 257 B.R. at 895–96.

C. The Objections of the Unions Are Overruled

The Unions contend that the proposed bidding procedures do not sufficiently incentivize prospective purchasers to assume the CBAs. According to the Unions, the Debtors should be required to provide a quantification of the bidding credit to any bidder who agrees to assume liabilities under the CBAs.

The Court finds that requiring the Debtors to provide a precise quantification of the value to be accorded to the assumption of CBA liabilities would unduly impair the Debtors' flexibility in the conduct of the auction, and would likely yield suboptimal results for all stakeholders. The Debtors must be allowed to conduct the Auction in accordance with their business judgment, especially given the complexity of an Auction of this type. Precise quantification of the valuation to be afforded to assumption of the CBAs would not be of material assistance to the sophisticated participants in this Auction, who will be assisted by professional advisors using their own detailed financial models and projections.

D. The Court Declines to Approve the 3.5% Breakup Fee

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The Court declines to approve the 3.5% Breakup Fee. The Court finds that a Breakup Fee of this magnitude is not warranted based on comparable transactions. Further, a Breakup Fee of 3.5% would likely chill bidding. The maximum Breakup Fee that the Court will approve is 3.0%.

It is true that the Court approved a Breakup Fee of 4.0% in connection with the sale of St. Louise and O'Connor to the County of Santa Clara. However, the Court took pains to emphasize that its approval of that Breakup Fee was not intended to provide a benchmark for future sales. A Breakup Fee must be carefully tailored to each transaction. The Breakup Fee approved in one transaction has limited precedential value as to different transactions.

The purchase price in the Santa Clara Sale was \$235 million, considerably less than the Stalking Horse Bid of \$610 million in the instant transaction. As a general rule, a larger transaction size results in a smaller breakup fee (in percentage terms). The cases cited by the Debtors in which higher breakup fees were approved reflect this general rule—the transactions at issue in those cases were an order of magnitude smaller than the instant transaction. For example, the 4.7% breakup fee and expense reimbursement approved in *In re Women First Healthcare, Inc.*, 332 B.R. 115, 118 (Bankr. D. Del. 2005) involved a stalking horse bid of only \$1.75 million. The 4.75% breakup fee approved in *In re Lake Burton Dev., LLC*, No. 09-bk-22830 (Bankr. N.D. Ga. Apr. 1, 2010) involved a stalking bid of \$10.52 million.

The Debtors point to the 3.5% breakup fee approved in *In re BPS Holdings, Inc.*, No. 16-12373 (Bankr. D. Del. Nov. 30, 2016) as a benchmark for this transaction. The sale price in *BPS Holdings* was \$575 million, comparable to the Stalking Horse Bid here. However, the higher breakup fee in *BPS Holdings* was necessary given that the debtors were being investigated by the U.S. Securities and Exchange Commission; had failed to timely file their most recent annual audited financial statements; and had been required to engage independent legal counsel to conduct an internal investigation of accounting practices. *See generally* Doc. No. 16, Case No. 16-bk-12373-KJC (Bankr. D. Del. October 31, 2016) (Bidding Procedures Motion filed in *BPS Holdings*). While the Hospitals offered for sale here have experienced operational losses, there is no suggestion of accounting fraud. To the contrary, the reliability of the Debtors' financials is attested to by a detailed report prepared by auditor Ernst & Young. A higher breakup fee is obviously necessary in situations involving the possibility of fraud, as purchasers will be required to conduct additional due diligence since they cannot rely upon published financial results.

The Court additionally finds that a 3.5% breakup fee is not appropriate given that

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SGM bid for the Hospitals in 2014. While it is true that much can change in the intervening years, SGM already has a baseline of familiarity with the Hospitals. A 3.0% breakup fee is sufficient to cover SGM's due diligence costs.

E. SGM's Consultation Rights are Approved

The Committee objects to SGM's right to be consulted in the event the Debtors decide to introduce additional procedural rules at the Auction(s). The Committee fears that such consultation rights will tilt the playing field in SGM's favor.

The Committee's objection is overruled. The Debtors retain ultimate authority over setting procedural rules, and it is in the Debtors' interest to ensure an efficient and fair auction. The Court does not believe that the sophisticated parties participating in this Auction will be deterred from bidding as a result of SGM's consultation rights.

F. SGM's Termination Rights are Unduly Broad

The APA allows SGM to terminate the transaction if the Attorney General imposes conditions beyond those set forth in Schedule 8.6, even if the Debtors obtain an order from the Bankruptcy Court authorizing SGM to purchase the Hospitals free and clear of such conditions. The Court finds that SGM's termination rights are unduly broad.

SGM receives a number of benefits under the APA, including the Breakup Fee and the right to be consulted with respect to procedural changes at the Auction(s). In return for receiving such benefits, SGM is required to assume certain obligations, including the obligation to consummate the sale. If SGM is to serve as the Stalking Horse Bidder, it is only reasonable that SGM be required to close the sale, provided that the Debtors obtain an order authorizing the sale free and clear of any additional conditions that may be imposed by the Attorney General.

The APA allows SGM to terminate the transaction in the event that the Debtors elect to proceed with a Partial Bid Auction. The Court finds this termination provision to be reasonable. SGM entered into the APA with the intent of purchasing all four Hospitals. SGM should not be required to proceed with a purchase of fewer than all four of the Hospitals.

G. St. Vincent IPA's Objection is Overruled

St. Vincent IPA contends that the Debtors should be required to segregate disputed portions of the Cure Amount. The Court finds that such segregation is unnecessary and would not be feasible, given the complexity of the Debtors' cash

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management system. St. Vincent IPA's objection is overruled.

H. Cigna's Objection is Sustained

The Court finds the language proposed by Cigna in its Sur-Reply with respect to the assumption and assignment of executory contracts to be generally appropriate, except that the Debtors shall have 48 hours from the conclusion of the Auction to notify executory contract counterparties. Specifically, the Court approves the following language (which differs somewhat from the that proposed by the parties):

The Debtors shall, no later than the earlier of (i) 48 hours after the conclusion of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume and assign any or all of the Cigna Provider Agreements as part of the Sale; provided, however, that such notice shall be irrevocable only to the extent that the Successful Bidder's transaction is approved by this Court **and an order thereon becomes final and non-appealable.**

I. Objection of the County of San Mateo and the Health Plan of San Mateo

The Debtors' Reply appears to have resolved the issues raised by the San Mateo Objectors. The Court agrees with the Debtors' characterization of § 5.1(b) of the APA. Specifically, the Court finds that the restrictions and limitations set forth in § 5.1(b) on communications between SGM and governmental authorities shall apply only to communications regarding licensing or regulation of the Hospitals with the relevant licensing or regulatory authorities. Such restrictions shall not apply to communications involving SGM (or any other prospective buyers) and any governmental authority on subjects unrelated to licensing or regulation by that authority.

J. Hooper's Objection is Overruled

To the extent that Hooper asserts that it is entitled to receive notification of the treatment of its Net Benefit Compensation prior to selection of the Successful Bidder, its objection is overruled. Hooper may raise any objections regarding its Net Benefit Compensation or the assumption and assignment of its executory contract at the Sale Hearing. It would be premature to address such objections in connection with this hearing. Because the treatment of Hooper's Net Benefit Compensation will be materially affected by the identity of the Successful Bidder, it would not be reasonable

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to require the Debtors to provide Hooper such information at this time.

Hooper's objection to the timeline proposed by the Debtors with respect to the assumption and assignment of executory contracts is overruled. The deadlines proposed by the Debtors are common in sales of this size and complexity.

K. The Timetable Proposed by the Debtors Provides UnitedHealthcare Sufficient Notice Regarding the Assumption of its Executory Contracts

UnitedHealthcare requests that the Debtors provide notice of the contracts to be assumed and assigned at least 70 days before the Closing Date.

The Court finds that the timetable proposed by the Debtors provides UnitedHealthcare sufficient notice of whether its executory contracts will be assumed and assigned. The Debtors will provide notice of the contracts to be assumed on April 11, 2019, two days after the Full Bid Auction concludes on April 9, 2019. In the Court's experience, the Attorney General's review of the transaction will require several months. Therefore, UnitedHealthcare will receive in excess of the 70 days' notice that it requests.

L. The California Attorney General's Objection Is Premature

The California Attorney General (the "Attorney General") seeks inclusion of broad language in the Bidding Procedures Order regarding the Attorney General's authority to review the sale. The proposed language assumes that the ultimate bidder will not be a governmental entity and that the Attorney General will therefore have authority to review the sale under Cal. Corp. Code § 5914. The winning bidder's identity cannot be known at this time, and it is possible that the winning bidder will be a governmental identity, in which case the Attorney General would not have authority to review the sale. Further, within the context of this Bidding Procedures Motion, the Court will not approve any limitations to its order not germane to its context.

The Attorney General's objection is premature. The Attorney General may raise its objection at the Sale Hearing. The Court declines to require the Debtor to include the language proposed by the Attorney General in the Bidding Procedures Order.

M. The Bidding Procedures Are Approved

Except for the (1) 3.5% Breakup Fee and (2) SGM's right to terminate as a result of additional conditions imposed by the Attorney General even if the Debtors obtain an order authorizing a sale free and clear of such conditions, the Bidding Procedures are approved. The Court finds that the Bidding Procedures are likely to maximize the

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proceeds received by the estate. *See Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005) (“The court’s obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances.”).

The timetable proposed by the Debtors shall apply, as follows (all times are local prevailing time):

- 1) Service of Notice of Sale Hearing: March 1, 2019.
- 2) Service of Assumption and Cure Notice: March 5, 2019.
- 3) Deadline for Executory Contract Counterparties to Object to the Sufficiency of the Cure Amount (as to counterparties who were served the Assumption and Cure Notice on March 5, 2019): March 22, 2019, at 4:00 p.m.
- 4) Partial Bid Deadline: March 28, 2019, at 4:00 p.m.
- 5) Full Bid Deadline: April 3, 2019, at 4:00 p.m.
- 6) Partial Bid Auction: April 8, 2019, at 10:00 a.m.
- 7) Full Bid Auction: April 9, 2019, at 10:00 a.m.
- 8) Notice of Results of Auction and filing of Memorandum Supporting the Sale: April 10, 2019, at 10:00 a.m.
- 9) Service of Notice of Executory Contracts to be Assumed and Assigned: April 11, 2019, at 10:00 a.m.
- 10) Sale Objection Deadline: April 12, 2019, at 4:00 p.m.
- 11) Deadline for Executory Contract Counterparties to Assert Objections Other than An Objection to the Sufficiency of the Cure Amount: April 12, 2019, at 4:00 p.m.
- 12) Reply Deadline: April 15, 2019, at 4:00 p.m.
- 13) Sale Hearing: April 17, 2019, at 10:00 a.m.

III. Conclusion

Based upon the foregoing, the Bidding Procedures Motion is GRANTED to the extent set forth herein.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge’s Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear

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at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The term "Prepetition Secured Creditors" has the meaning set forth in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 409] (the "Final Financing Order").

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

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#11.00 Hearing re [1153] Rejection and/or modification of collective bargaining agreements.

fr. 1-30-19

Docket 0

***** VACATED *** REASON: RESOLVED BY STIPULATION FILED
ON 1-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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#12.00 Hearing re [1153] Cure objections

fr. 1-30-19

Docket 0

Tentative Ruling:

2/5/2019

The hearing is CONTINUED to **February 13, 2019, at 10:00 a.m.** pursuant to the parties' Stipulation [Doc. No. 1467].

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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2:18-20151 Verity Health System of California, Inc.

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#12.10 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medi-Cal Provider Agreements

fr. 1-30-19

Docket 0

***** VACATED *** REASON: CONTINUED TO 2-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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#12.20 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medicare Provider Agreements

fr. 1-30-19

Docket 0

***** VACATED *** REASON: CONTINUED TO 2-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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

Wednesday, February 6, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#13.00 HearingRE: [15] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .

Docket 15

Tentative Ruling:

2/5/2019

Hearing required. Subject to consideration of any oral argument to be made at the hearing, the Court is inclined to adopt the following tentative ruling.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 15] (the "R/S Motion")
2. Memorandum of Points and Authorities in Support of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 16]
3. Continuation of Declaration of Joseph Zelmanovitz in Support of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 17] (the "Zelmanovitz Decl.")
4. Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 18] ("RJN")
5. Application for Order Setting Hearing on Shortened Notice [Doc. No. 19]
6. Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 20]
7. Notice of Entry of Order Granting Application and Setting Hearing on Shortened Notice Regarding Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 22]
8. Declaration of Anthony J. Napolitano Regarding Notice of Order Shortening Time on Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 24]
9. Debtor's Opposition to Alishaev Brother's Inc. Motion for Relief from the Automatic Stay [Doc. No. 28]

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10. Oral reply to be made at the hearing

I. Facts and Summary of Pleadings

Bahram Zendedel (the "Debtor") filed this voluntary chapter 7 case on January 18, 2019 (the "Petition Date"). Alishaev Brothers Inc. ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed under applicable non-bankruptcy law to final judgment in the nonbankruptcy action captioned *Alishaev Brothers Inc. v. LA Girl Jewelry, Inc., NER Precious Metals, Inc., et al* (Case No. 1:17-CV-7505 (JGK)) pending in the United States District Court for the Southern District of New York (the "District Court Action"). Movant initiated the District Court Action on October 2, 2017 by the filing of a complaint asserting claims for fraud, conversion, replevin, breach of contract, liability under a guaranty, violations of debtor and creditor law, constructive trust, and alter ego liability (the "Complaint"). RJN, Ex. 2. The District Court Action involves several non-debtor defendants. Trial is scheduled to begin on February 11, 2019.

Movant seeks an order annulling the stay retroactively to the Petition Date to cure post-petition acts taken by Movant without knowledge of the bankruptcy case. Movant states that on January 21, 2019, without knowledge of the Debtor's bankruptcy filing, Movant filed its *Plaintiffs Proposed Findings of Fact and Conclusions of Law* (the "Proposed Findings") in the District Court Action. RJN, Ex. 5. Movant further states that Debtor responded by filing a *Notice of Stay of Proceedings* advising the District Court of the commencement of this case and asserting that the entire District Court Action was stayed. RJN, Ex. 6. On January 22, 2019, the District Court issued its *Memo Endorsement* ordering counsel for the Debtor to advise the Court when the bankruptcy stay is lifted and directing the parties to advise the court if there is any reason to delay the trial currently scheduled for February 11, 2019. RJN, Ex. 7. As a result, on January 23, 2019, counsel for the Defendant submitted a letter advising the District Court that the entire action was stayed and, therefore, the trial could not proceed. RJN, Ex. 8; Zelmanovitz Decl., ¶ 19. Movant filed a responsive letter on January 23, 2019 refuting the Debtor's counsel's blanket assertion that commencement of the Debtor's bankruptcy case stays the action against the non-debtor defendants. RJN, Ex. 9. However, Movant's counsel did advise the District Court that the action should be tried at one time to promote judicial economy. *Id.*

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On January 24, 2019, the District Court entered a *Memo Endorsement* finding that the automatic stay applies only to the Debtor. RJN, Ex. 10. The same day, the District Court entered a *Memo Endorsement* staying the February 11, 2019 trial pending a decision on a motion to lift the automatic stay as to the Debtor. RJN, Ex. 11. The District Court did not vacate or continue the February 11, 2019 trial date. Zelmanovitz Decl., ¶ 22. Accordingly, on January 28, 2019, Movant filed the R/S Motion and sought a hearing on shortened notice to allow the trial to proceed as scheduled. On January 28, 2019, this Court granted Movant's request for a hearing on shortened time [Doc. Nos. 19, 20].

Movant contends that sufficient cause exists under section 362(d)(1) to lift the stay to permit it to adjudicate its claims against the Debtor in the District Court Action. First, Movant asserts that lifting the stay will promote judicial economy because the claims arise under nonbankruptcy law, the District Court Action has been actively litigated since October 2017, the parties have engaged in extensive discovery, and the District Court has entered a Joint Pretrial Order and set the matter for trial commencing on February 11, 2019. RJN, Ex. 3 and 4. Movant states that the District Court Action has reached such an advanced stage of litigation that judicial economy would be undermined if the parties were required to relitigate their dispute in this court.

Next, Movant contends that since this is a chapter 7 case there will be no prejudice to the bankruptcy estate if the claims were to be litigated to final judgment in the District Court Action, but Movant would be significantly prejudiced if it is forced to litigate in two different forums. Movant also argues that the District Court is best suited to apply New York state law to adjudicate the claims at issue. Movant also argues that the bankruptcy case was filed in bad faith to delay or interfere with the prosecution of the District Court Action.

Movant also requests waiver of the 14-day stay prescribed by FRBP 4001(a)(3) and that the order be binding and effective in future bankruptcy cases.

Debtor filed a timely Opposition to the R/S Motion [Doc. No. 28]. Debtor states that he is the 100% owner of shares of non-debtor defendant LA Girl Jewelry, Inc., ("LAG") and that pre-petition, approximately \$1,000,000 of LAG's assets were seized

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by the Los Angeles County Sheriff's Department (the "LASD") pursuant to a prejudgment writ of attachment. Debtor contends that he is a fiduciary of LAG, that all of the shares of LAG are part of his bankruptcy estate and, therefore, that the seized assets are part of the Debtor's estate. Accordingly, the Debtor argues that lifting the stay to allow Movant to proceed against the assets of LAG will interfere with Debtor's estate and will subject Movant to potential turnover litigation by the Chapter 7 Trustee (the "Trustee"). Debtor also contends that the seized assets belong to this estate and that granting relief from stay would impede the Trustee's ability to administer those assets and prejudice debtor's creditors.

Debtor also argues that granting relief from stay will only result in partial relief because the District Court Action involves a claim for fraud which could result in separate litigation in this case with respect to the dischargeability of any judgment. In sum, the Debtor submits that the balance of harms weighs in his favor.

As of the preparation of this tentative ruling, the Trustee has not filed a response or opposition.

Pursuant to this Court's OST, the Court will consider Movant's oral reply at the hearing.

II. Findings of Fact and Conclusions of Law

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

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

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underlying the claim is not litigated during the hearing.").

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

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause" 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other

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- interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
 9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
 10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
 11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
 12. The impact of the stay on the parties and the "balance of hurt[.]"

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

Movant has established a prima facie case that "cause" exists to grant relief from stay under section 362(d)(1). Granting relief from stay will best promote interests of judicial economy because the litigation involves several non-debtor defendants and is in its final stage with trial set to occur on February 11, 2019. While the District Court is not a specialized tribunal established specifically to hear the claims asserted in Movant's complaint, the District Court is much more intimately familiar with the parties' dispute and applicable New York law and can more expeditiously move the litigation to final judgment. The Court also finds that the timing of the Debtor's bankruptcy filing, and representations made in pleadings submitted to the District Court support a finding that the Debtor filed this case to hinder and delay the District Court Action from proceeding to trial.

Additionally, the Trustee has not opposed Movant's request for relief from stay and, based upon this Court's independent review of the Debtor's schedules, it does not appear that this is a surplus estate. Therefore, the Debtor has not demonstrated standing to object to the R/S Motion, particularly with respect to any alleged interest the estate might have in LAG's assets, prejudice to creditors, or potential avoidable transfer claims, among others. Furthermore, the Court is not persuaded that granting relief will only result in partial relief simply because Movant may elect to later seek a nondischargeability determination with respect to any judgment entered in the District Court. On balance, the Court finds that the balance of hurt tips in Movant's favor.

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

Movant's request to annul the stay retroactively to the Petition Date is GRANTED. Movant promptly filed the R/S Motion after learning of the Debtor's bankruptcy filing and granting retroactive relief will not result in irreparable harm to the Debtor, but will restore the status quo and avoid any prejudice to Movant resulting from a delay of the District Court Action. The Court also finds it appropriate to waive the 14-day stay prescribed by Federal Rule 4001(a)(3). All other relief is denied.

In light of the pending trial on February 11, 2019, Movant is directed to lodge a proposed order promptly after the hearing, incorporating this tentative ruling by reference.

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

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

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Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:18-19418 Eva Diaz

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Adv#: 2:18-01308 LENDMARK FINANCIAL SERVICES, LLC. v. Diaz

#100.00 HearingRE: [18] Motion for Default Judgment (MacLeod, James)

Docket 18

Tentative Ruling:

2/05/2019

The Complaint's allegations do not support entry of default judgment against the Plaintiff. Motion DENIED. By separate order, the Court will require the Plaintiff to show cause why this action should not be dismissed, for failure to state a claim upon which relief can be granted.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion for Default Judgment Under LBR 7055-1 [Doc. No. 18] (the "Motion for Default Judgment")
 - a) Complaint to Determine Dischargeability of Debt [Doc. No. 1] (the "Complaint")
- 2) No opposition to Motion is on file

I. Facts and Summary of Pleadings

Lendmark Financial Services, LLC (the "Plaintiff") commenced this dischargeability action against Eva Luz Diaz (the "Defendant") on October 1, 2018. The Complaint alleges that Defendant induced Plaintiff to extend credit by false pretenses and false representations—specifically, mis-stating her income on a loan application and using her mother's social security number on the loan application, rather than her own. The Complaint seeks a judgment that indebtedness in the amount of \$4,165.13, plus costs of \$350.00 and reasonable attorneys' fees, is non-dischargeable pursuant to § 523(a)(2)(A).

On November 28, 2018, the Clerk of the Court entered Defendant's default. Defendant personally appeared at a Status Conference conducted on January 15, 2019, but has not responded to the Complaint or the Motion for Default Judgment.

II. Findings and Conclusions

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Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). However, the Court may enter default judgment only if the Complaint sets forth allegations showing that Plaintiff is entitled to the relief requested. As set forth below, the Complaint fails to state a claim upon which relief can be granted. Upon its own motion, the Court will require Plaintiff to appear and show cause why the Complaint should not be dismissed, pursuant to Civil Rule 12(b)(6), for failure to state a claim.

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*" (emphasis added). To except from discharge indebtedness obtained by a false statement respecting a debtor's financial condition, creditors must satisfy the stricter criteria of §523(a)(2)(B). Section 523(a)(2)(B) excepts from discharge indebtedness obtained through use of a statement in writing:

- 1) that is materially false;
- 2) respecting the debtor's or an insider's financial condition;
- 3) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- 4) that the debtor caused to be made or published with intent to deceive....

§ 523(a)(2)(B).

The Supreme Court has explained the structure of §523(a)(2) as follows:

The text of § 523(a)(2) plainly heightens the bar to discharge when the fraud at issue was effectuated via a "statement respecting the debtor's financial condition." The heightened requirements, moreover, are not a shield for dishonest debtors. Rather, they reflect Congress' effort to balance the potential misuse of such statements by both debtors and creditors. As the Court has explained previously:

"The House Report on the [Bankruptcy Reform Act of 1978] suggests that Congress wanted to moderate the burden on individuals who submitted false financial statements, not because lies about financial condition are

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less blameworthy than others, but because the relative equities might be affected by practices of consumer finance companies, which sometimes have encouraged such falsity by their borrowers for the very purpose of insulating their own claims from discharge.” *Field v. Mans*, 516 U.S. 59, 76–77, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995).

Specifically, as detailed in *Field*, the House Report noted that consumer finance companies frequently collected information from loan applicants in ways designed to permit the companies to later use those statements as the basis for an exception to discharge. Commonly, a loan officer would instruct a loan applicant “ ‘to list only a few or only the most important of his debts’ ” on a form with too little space to supply a complete list of debts, even though the phrase, “ ‘I have no other debts,’ ” would be printed at the bottom of the form or the applicant would be “ ‘instructed to write the phrase in his own handwriting.’ ” *Id.*, at 77, n. 13, 116 S.Ct. 437. If the debtor later filed for bankruptcy, the creditor would contend that the debtor had made misrepresentations in his loan application and the creditor would threaten litigation over excepting the debt from discharge. That threat was “often enough to induce the debtor to settle for a reduced sum,” even where the merits of the nondischargeability claim were weak. H.R. Rep. No. 95–595, p. 131 (1977).

Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1763–64, 201 L. Ed. 2d 102 (2018).

The Supreme Court has held that “a statement is ‘respecting’ a debtor’s financial condition if it has a direct relation to or impact on the debtor’s overall financial status.” *Lamar*, 138 S.Ct. at 1761. Such statements can include statements pertaining to a single asset, because a “single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor’s overall financial condition and can help indicate whether a debtor is solvent or insolvent, able to repay a given debt or not.” *Id.*

The Complaint alleges that Defendant fraudulently induced Plaintiff to extend credit by mis-stating her income on an *Application for Credit* (the “Credit Application”). According to the Complaint, Defendant’s representations were misleading because Defendant did not disclose “that her income fluctuated a great deal with her employer.” Complaint at ¶6.

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With respect to Defendant's alleged false representations regarding her income, the Complaint fails to state a claim upon which relief can be granted. The Complaint is brought under § 523(a)(2)(A), not under § 523(a)(2)(B). The Complaint's allegations regarding false written representations should have been pleaded under § 523(a)(2)(B), not § 523(a)(2)(A). A statement regarding Defendant's income clearly qualifies as a "statement regarding the debtor's financial condition..."

Even if the Complaint had been properly brought under § 523(a)(2)(B), it would still fail to state a claim upon which relief could be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

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

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

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

Even if it had asserted a claim under § 523(a)(2)(B), the facts alleged are not sufficient to state a plausible claim for relief. To obtain relief under § 523(a)(2)(B), a creditor must allege facts showing that it "reasonably relied" upon false representations made by the debtor. Here, the Complaint alleges that Plaintiff was misled by Defendant's alleged failure to disclose large fluctuations in her monthly

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income. Yet the Credit Application that Plaintiff provided Defendant contains very limited space for supplying information regarding monthly income. Plaintiff's contention that it reasonably relied upon Defendant's representations regarding monthly income is severely undercut where the paperwork created by Plaintiff did not provide an opportunity for Defendant to report income fluctuations. In addition, Plaintiff does not allege any specific facts showing that its reliance upon Defendant's representations regarding her income was reasonable. For example, Plaintiff does not allege that it conducted any investigation into the stability of Defendant's income.

Section 523(a)(2)(B) was enacted to address precisely this sort of conduct by creditors. The Credit Application contains only enough space for the Defendant to list monthly gross and net income. It does not contain any space for Defendant to indicate monthly income fluctuations, or require Defendant to express monthly income in terms of a range. The Credit Application appears to have been designed to facilitate the dischargeability complaints such as that filed here.

The Complaint further alleges that Defendant supplied a false social security number. Within the context of the Credit Application, the Court finds that statements regarding a social security number qualify as a statement respecting the debtor's financial condition. The reason is that lenders require applicants for credit to supply a social security number because such information allows lenders to investigate the applicant's credit history.

The allegations regarding the false social security number likewise fail to state a claim, because the Complaint does not allege facts sufficient for the Court to find that it was plausible that Plaintiff relied upon the social security number in extending credit. First, the Complaint alleges that Plaintiff extended credit to retire previous indebtedness. The most plausible inference from the Complaint's allegations is that the Plaintiff already had some familiarity with Defendant, and extended credit on this basis, rather than on the basis of the social security number. The Complaint contains no allegations supporting an inference that Plaintiff did rely upon the social security number in extending credit. For example, the Complaint does not allege that Plaintiff ran a credit check using the social security number. A blanket, threadbare statement that Plaintiff relied upon the social security number in extending credit is not sufficient to state a claim. Plaintiff must allege specific facts rendering such an allegation plausible.

Finally, Plaintiff alleges that it extended credit based upon Defendant's representation that she intended to repay the loan. Although not entirely clear from the Complaint, this allegation is apparently based upon the Promissory Note's standard

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“promise to pay” language. This allegation fails to state a claim for relief under § 523(a)(2)(A). To prevail on a § 523(a)(2)(A) claim on the grounds of false pretenses or false representations, a creditor must prove that:

- (1) the debtor made the representations;
- (2) that at the time he knew they were false;
- (3) that he made them with the intention and purpose of deceiving the creditor;
- (4) that the creditor relied on such representations; and
- (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010).

If the standard “promise to pay” language in Promissory Notes were construed as false representation sufficient to render indebtedness non-dischargeable, creditors would be able to insulate all consumer debt from discharge, rendering § 523(a)(2)(A) a nullity. To except debt from discharge, creditors must do more than show that the debtor signed a Promissory Note containing standard language. Creditors must point to specific false representations and allege facts showing that such representations were made with the intent to deceive. Here, the Complaint contains no such allegations.

Based upon the foregoing, the Court will issue an order requiring the Plaintiff to show cause why this action should not be dismissed.

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

Party Information

Debtor(s):

Eva Diaz

Pro Se

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Defendant(s):

Eva Luz Diaz

Pro Se

Plaintiff(s):

LENDMARK FINANCIAL

Represented By
Donald T Dunning
James MacLeod

Trustee(s):

Wesley H Avery (TR)

Pro Se

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2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#101.00 HearingRE: [84] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement including Notice of Motion

Docket 84

Tentative Ruling:

2/5/2019

For the reasons set forth below, the Debtor's Motion to extend the exclusive periods under which it may file and solicit votes on a Plan of Reorganization is GRANTED.

Pleadings Filed and Reviewed

1. Debtor's Notice of Motion and Motion for an Order Extending the Exclusive Periods to File Its Plan of Reorganization and Secure Acceptance of its Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) [Doc. No.84] (the "Motion")
2. No opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, Andrew's & Son Tradings Inc., dba Beston Shoes (the "Debtor") seeks a second extension of the exclusive periods under which it may file and solicit votes on a Plan of Reorganization (the "Plan"). The Debtor's exclusive period to file a Plan expires on February 8, 2019. The Debtor's exclusive period to solicit votes with respect to a Plan expires on April 9, 2019. The Debtor seeks an order (1) extending the exclusive period to file a Plan by ninety days, to and including May 9, 2019, and (2) extending the exclusive period to solicit votes with respect to the Plan by ninety days, to and including July 8, 2019. The foregoing extensions are without prejudice to the right to seek further extensions of the exclusivity periods.

The Debtor states that another extension of the exclusive periods is necessary because since seeking its prior extension several issues have arisen which diverted the Debtor's attention away from preparing and finalizing a plan of reorganization.

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 6, 2019

Hearing Room 1568

11:00 AM

CONT... Andrew's & Son Tradings Inc.

Chapter 11

Specifically, the Debtor had to review and respond to two motions for relief from stay with respect to Debtor's vehicles, which the Debtor states that it successfully resolved by stipulation. The Debtor also states that it experienced issues with Amazon and Walmart after both vendors withheld funds owing to the Debtor. The Debtor states that these issues have also now been resolved.

The Debtor believes it is appropriate to extend its deadlines to file a Plan because the terms of any proposed plan remain in flux as it continues to negotiate with creditors.

II. Findings of Fact and Conclusions of Law

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. If the debtor files a plan within the 120-day exclusivity period, §1121(c)(3) provides that exclusivity is extended for an additional 60 days to maintain exclusivity during the plan solicitation period. If the plan has not been accepted by holders of impaired claims before 180 days after the date of the order for relief, then the exclusivity period terminates, unless the debtor has obtained an extension. §1121(c)(3). Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the exclusivity periods in accordance with the Debtor's request. The Debtor continues to operate a profitable business while negotiating with its creditors towards its goal of proposing a consensual Plan. An exclusivity extension is appropriate so that the Debtor will have additional time to analyze and review its claims and continue negotiating with creditors.

The exclusive period for the Debtor to file a Plan is extended from February 8, 2019 to and including May 9, 2019. The Exclusive period for the Debtor to solicit acceptances of its Plan is extended from April 9, 2019 to and including July 8, 2019. These extensions are without prejudice to the Debtor's ability to request further extensions of exclusivity.

The Debtor shall submit a conforming order, incorporating this tentative ruling by

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CONT... Andrew's & Son Tradings Inc.

Chapter 11

reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By

Christopher J Langley

Steven P Chang

David Samuel Shevitz

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

Friday, February 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing

RE: [1182] Motion Debtors' Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Regional Hospital Upon Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

fr. 1-30-19

Docket 1182

***** VACATED *** REASON: CONTINUED 2-13-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing
RE: [1192] Motion Debtor's Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union-United Healthcare Workers-West's Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

fr. 1-30-19

Docket 1192

***** VACATED *** REASON: CONTINUED 2-13-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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

Monday, February 11, 2019

Hearing Room 1568

10:00 AM

2:14-32240 Chang Bae Moon

Chapter 7

Adv#: 2:15-01108 Romex Textiles, Inc. v. Park

#1.00 Hearing re [42] appearance and examination and enforcement of judgment re judgment debtor JISOOK PARK.

fr: 1-8-19

Docket 0

Tentative Ruling:

2/7/2019

Appearances required.

Party Information

Debtor(s):

Chang Bae Moon

Represented By
Young K Chang

Defendant(s):

Jisook Park

Represented By
Young K Chang

Joint Debtor(s):

Jisook Park

Represented By
Young K Chang

Plaintiff(s):

Romex Textiles, Inc.

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Chang Bae Moon

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, February 11, 2019

Hearing Room 1568

10:00 AM

2:18-24364 Rafaelito VillaFlores Duran and Salvacion Bocanegra

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Toyota Corolla .

Docket 10

Tentative Ruling:

2/7/2019

Tentative Ruling:

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

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

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

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

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

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CONT... Rafaelito VillaFlores Duran and Salvacion Bocanegra Chapter 7

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

Party Information

Debtor(s):

Rafaelito VillaFlores Duran

Represented By
Sundee M Teeple

Joint Debtor(s):

Salvacion Bocanegra Duran

Represented By
Sundee M Teeple

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, February 11, 2019

Hearing Room 1568

10:00 AM

2:18-24618 B City LLC

Chapter 7

#3.00 Hearing
RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 107 East Broadway Avenue, Glendale, CA 91205 .

fr: 2-4-19

Docket 10

Tentative Ruling:

2/7/2019

For the reasons set forth herein, the Motion is DENIED without prejudice. Movant's proofs of service [Doc. Nos. 10, 13, 14] do not reflect that the Motion was served on the Debtor as required by Local Bankruptcy Rule 4001-1(c)(1)(C)(i). The Movant may refile the Motion with service upon the Debtor in accordance with applicable local and federal rules.

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

Party Information

Debtor(s):

B City LLC

Represented By
Roland H Kedikian

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Monday, February 11, 2019

Hearing Room 1568

10:00 AM

2:18-21723 Los Angeles Training Center LLC

Chapter 11

#4.00 Hearing
RE: [32] Amended Motion for Relief from Stay Notice of Motion and Motion For Relief From The Automatic Stay Or For Order Confirming That the Automatic Stay Does Not Apply Under 11 U.S.C. Section 362(1).

Docket 32

Tentative Ruling:

2/7/2019

See Calendar No. 5, incorporated by reference.

Party Information

Debtor(s):

Los Angeles Training Center LLC

Represented By
Robert M Yaspan

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Monday, February 11, 2019

Hearing Room 1568

10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#5.00 Hearing
RE: [110] Second Amended Motion For Relief From Automatic Stay

Docket 110

Tentative Ruling:

2/7/2019

For the reasons set forth below, the R/S Motion is GRANTED on the terms stated below.

Pleadings Filed and Reviewed

1. Amended Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does not Apply Under 11 U.S.C. § 362(i) (Unlawful Detainer) [*In re Los Angeles Training Center, LLC*, Case No. 2:18-bk-21723-ER (the "LATC Case"), Doc. No. 32] (the "R/S Motion")
2. Second Amended Notice of Motion for Relief from Automatic Stay [*In re F.A.S.S.T., LLC*, 2:18-bk-21828-ER (the "FASST Case"), Doc. No. 110] (the "Notice")
3. Debtors' Opposition to Motion for Relief from Stay Filed by Brentwood Gateway, LLC [FASST Case, Doc. No. 108] (the "Opposition")
4. Brentwood Gateway LLC's reply in Support of Motion for Relief from Automatic Stay [FASST Case, Doc. No. 119] (the "Reply")
5. Declaration re Postpetition Payments in Reply to Debtor's Opposition to Motion for Relief from Automatic Stay [FASST Case, Doc. No. 120]
6. Declaration of Eric Fromme in Support of Brentwood Gateway LLC's Reply in Support of Motion for Relief from Automatic Stay [FASST Case, Doc. No. 121]
7. Amended Proof of Service re Declaration re Postpetition Payments in Opposition to Motion for Relief from Automatic Stay [FASST Case, Doc. No. 122]

I. Facts and Summary of Pleadings

On October 5, 2018, Los Angeles Training Center, LLC ("LATC") filed a voluntary chapter 11 petition [Case No. 2:18-bk-21723-ER]. On October 9, 2018,

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CONT... F.A.S.S.T. LLC

Chapter 11

F.A.S.S.T., LLC ("FASST") filed a voluntary chapter 11 petition [Case No. 2:18-bk-21828-ER]. Shortly thereafter, this Court granted LATC and FASST's (together, the "Debtors") motion for joint administration and designated the FASST case as the lead case [FASST Case, Doc. No. 32] (the "Joint Administration Order"). The Debtor's subsequently moved for substantive consolidation, which this Court approved by order entered January 29, 2019 [FASST Case, Doc. No. 109] (the "Substantive Consolidation Order").

Summary of R/S Motion

Brentwood Gateway, LLC ("Landlord") seeks relief from the automatic stay pursuant to sections 362(d)(1) and (d)(2) to initiate an unlawful detainer action against LATC with respect to LATC's lease of commercial real property located at 11611 San Vicente Boulevard, Suite GF4, Los Angeles, California 90049 (the "Lease") based upon the Debtors' failure to pay pre and post-petition rent obligations. **[Note 1]** Landlord states that pursuant to the terms of the Lease, the Debtor is required to pay \$33,667.34/month in base rent, plus an approximately \$6,134.66/month for operating costs, taxes and parking charges. Accordingly, the total monthly rental obligation is \$39,802.

Landlord states that Debtors failed to pay pre-petition rent obligations for the months of June, August and September and that pre-petition arrears total \$125,930.13. Landlord further states that the Debtors have also failed to pay post-petition rent obligations in full for the months of October and December 2018 and that Debtors' post-petition unpaid rent and late fee obligations total \$79,159.92. Landlord states that on December 20, 2018, Debtors' counsel advised it that the Debtors were sending two checks for \$15,000, but as of the filing of the R/S Motion, those checks had not yet cleared.

Landlord contends that cause exists within the meaning of section 362(d)(1) because the Debtors are in default under the terms of the Lease and Landlord's interest is not adequately protected because of the Debtors' failure to tender five months' worth of rent obligations. Landlord further asserts that cause exists because the Debtors have failed to timely perform all obligations arising from the Lease as required by section 365(d)(3) and Debtors have made no indication that they intend to cure all arrears.

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CONT... F.A.S.S.T. LLC

Chapter 11

If the Court is inclined to grant Landlord's request for stay relief, Landlord also requests that the Court waive the 14-day stay prescribed by FRBP 4001(a)(3) and grant it certain extraordinary relief. In the alternative, Landlord requests that the Court require the Debtors to make adequate protection payments in the form of regular monthly payments at the Lease rate from the petition date until assumption or rejection of the Lease.

Summary of Debtors' Opposition

The Debtors filed a timely Opposition to the R/S Motion. The Debtors contend that the R/S Motion is procedurally defective because (i) Landlord filed the motion in the LATC Case despite this Court's Joint Administration Order directing all pleadings to be filed in the FASST Case; and (ii) Landlord failed to serve the R/S Motion on the Debtors.

The Debtors further contend that the R/S Motion should be denied because Landlord has failed to establish a prima facie case that cause exists to grant relief from stay. Debtors assert that there is no cause to grant stay relief because the Lease is necessary for an effective reorganization because the Debtors' sole source of income stems from their ability to operate a gym at the leased premises. The Debtors acknowledge that they are behind on post-petition rent, but state that they have already seen increased gross revenues since filing these cases and anticipate further increases in gross revenues as a result of normal seasonal upticks for the first half of 2019. The Debtors anticipate being able to make the monthly rent payment for March 2019 and should be able to make additional payments to make up for post-petition arrears beginning in April 2019. The Debtors intended to catch up on rent earlier but were forced to delay this plan after discovering that a past manager had allegedly embezzled funds from the Debtors. The Debtors believe that they may be able to redirect payments to the correct account and improve cash flow.

The Debtors also state that they intend to bring a motion to extend the time to assume the Lease for an additional ninety days and then anticipate being able to assume the Lease and provide adequate assurances of the ability to promptly cure all arrearages under the Lease. **[Note 2]** Finally, the Debtors challenge Landlord's accounting because they submit that October 2018 rent has been paid and that they

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CONT... F.A.S.S.T. LLC

Chapter 11

made additional payments in December 2018. The Debtors attached copies of \$32,000 worth of checks payable to Landlord. Opposition, Ex. 2.

Summary of Landlord's Reply

Landlord submitted a timely Reply. First, with respect to the Debtors' procedural arguments, Landlord states that it has cured its error in filing the R/S Motion in the LATC Case by filing the Notice in the FASST Case and argues that the Debtors have not cited any authority to support denial of the R/S Motion on this basis or demonstrated any prejudice. Landlord also asserts that Debtors' contention that it failed to serve the Debtors is wrong because its proof of service reflects service on Debtors' President and CEO, Charles DeBus, and on Debtors' counsel.

Next, Landlord highlights that the Debtors failed to provide any evidence in support of their alleged increase in post-petition profits or anticipated future profits and that any contention concerning alleged profits is misleading given that the Debtors have failed to maintain post-petition rental payment obligations. Landlord acknowledges that the Debtors have made a total of \$45,483.58 in post-petition payments, but states that a check for \$10,000 was returned for insufficient funds. Furthermore, since filing the Original R/S Motion, rental payments for January and February 2019 have accrued and not been paid. Landlord also highlights that the Debtors' future proposals to pay rent are not certain and argues that it should not be forced to finance the Debtors bankruptcy cases while they attempt to reorganize their affairs.

II. Findings of Fact and Conclusions of Law

A. Any Procedural Deficiencies With the R/S Motion Are Harmless

Debtors' contention that the R/S Motion is procedurally improper because it was not filed in the lead FASST Case and not served on the Debtors is overruled. The Debtors have not identified any prejudice resulting from these deficiencies.

B. Cause Exists to Grant Relief From Stay

As a preliminary matter, a motion for relief from the automatic stay is a summary

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CONT... F.A.S.S.T. LLC

Chapter 11

proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

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

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

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court *shall* grant relief from the stay . . . (1) for cause . . ." 11 U.S.C. § 362(d)(1) (emphasis added). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

The Landlord has made a *prima facie* showing that "cause" exists to lift the stay under section 362(d)(1) based upon the Debtors' failure to pay post-petition rent obligations in full for November 2018 (partial payment missing), December 2018, January 2019 and February 2019. *See In re Sweet N Sour 7th Ave., Corp.*, 431 B.R. 63 (Bankr. S.D.N.Y. 2010) (internal citations omitted) ("The failure to pay post-petition rent may also serve as grounds for lifting the automatic stay." The Landlord

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CONT... F.A.S.S.T. LLC

Chapter 11

will . . . not be adequately protected if the Debtor falls behind in postpetition rent.").

The Debtors have not carried their burden to show that relief from stay is unwarranted. The Debtors do not dispute that they are in default under the Lease and owe significant arrears for unpaid rent and Debtors have not presented any evidence to support their contention that they have a realistic ability of paying future rent obligations. The Court agrees that the Debtors' assertion that gross profits have increased by approximately 15% since the inception of these cases is unsupported by evidence and is contradicted by the Debtors' inability to pay post-petition rent as it came due and the return of Debtors' December 2018 rent check because of insufficient funds. Similarly, the Debtors' have failed to present evidence to convince this Court that they could generate sufficient funds from investors or redirecting funds away from an unauthorized account to adequately protect the Landlord going forward. Additionally, to date, the Debtors have only filed a monthly operating report for FASST for October 2018, so there is no way for this Court to evaluate the Debtors' financial condition. Therefore, on this record, the Court finds that "cause" exists within the meaning of section 362(d)(1) to lift the stay.

The Landlord also argues that cause exists to lift the stay pursuant to section 362(d)(2). For relief to be granted under section 362(d)(2) the debtor must both (i) lack equity in the property, and (ii) the property must not be necessary for an effective reorganization. *See* 11 U.S.C. § 362(d)(2). Here, it is clear that the Lease is necessary to the reorganization as the Debtors cannot operate their business without the Lease. Therefore, the Landlord has not carried its burden of proof with respect to section 362(d)(2).

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Landlord to initiate an unlawful detainer proceeding and proceed under applicable state law to final judgment, *provided that the stay shall remain in effect with respect to enforcement of any judgment against the Debtors or estate property absent further order of this Court*. This order shall be binding and effective despite conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The Court also finds it appropriate to waive the 14-day stay prescribed by Federal Rule 4001(a)(3). All other relief is denied.

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CONT... F.A.S.S.T. LLC

Chapter 11

The Landlord is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1: On December 31, 2018, Landlord filed a prior motion seeking relief from stay to initiate an unlawful detainer proceeding against LATC in the LATC Case [Doc. No. 22] (the "Original R/S Motion"). However, Landlord subsequently withdrew that motion on January 17, 2019, presumably to cure certain procedural deficiencies [Doc. No. 26].

Note 2: On January 30, 2019, the Debtors filed a Motion to Extend Time To Assume or Reject [Doc. No. 111] and self-calendared a hearing for March 5, 2019.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#1.00 Status Conference
RE: [11] Motion to Change Venue/Inter-district Transfer Adversary Proceeding
to W.D. Wash. (Plevin, Mark)

fr: 8-15-18; 11-13-18

Docket 11

Tentative Ruling:

2/11/2019

A §105 injunction entered by the Bankruptcy Court for the Western District of Washington remains in effect with respect to this proceeding. A continued Status Conference shall be held on **June 11, 2019, at 10:00 a.m.** All deadlines in this action remain tolled as long as the §105 injunction remains in effect.

By no later than fourteen days prior to the continued Status Conference, all parties shall file a Joint Status Report, which shall discuss (a) the status of the appeal of the Settlement Orders (as that term is defined in the *Motion by Century Indemnity Company to Transfer Venue to the Debtor's Home Court, the Western District of Washington* [Doc. No. 11] and (b) any events occurring in the Chapter 11 bankruptcy case of *Fraser's Boiler Service, Inc.*, Case No. 18-41245-BDL (Bankr. W.D. Wash.) that are relevant to the disposition of this action.

The Court will prepare and enter an order setting the continued Status Conference.

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

Party Information

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CONT...

Chapter 0

Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's, Hartford Accident And Indemnity	Pro Se Represented By Philip E Smith
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18

Docket 1

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 34] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Pobeda Services, Inc.	Represented By Jeffrey S Shinbrot
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18

Docket 1

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 37] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

**United States Bankruptcy Court
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CONT... **Friendly Adult Day Healthcare Center, Inc.** **Chapter 7**

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Hakop Azatian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 10-16-18; fr. 12-12-17; 3-7-18; 5-8-18; 10-16-18; 12-11-18

Docket 1

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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CONT... **Friendly Adult Day Healthcare Center, Inc.** **Chapter 7**

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Grish Akopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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2:15-25183 Friendly Adult Day Healthcare Center, Inc.

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Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18

Docket 1

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Represented By Kelly F Ryan
Henry A. Hakopian	Represented By Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#6.00 Status Hearing RE: [16] Amended Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (RE: related document(s)1 Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.) filed by Plaintiff Manuel Ramirez). (Lomeli, Lydia R.)

Docket 16

Tentative Ruling:

2/11/2019

Both parties to this action are proceeding *pro se*. The Court notes that Defendant filed a document captioned *Objection to Enter a Final Order or Judgment* [Doc. No. 24] (the "Objection"). In the Objection, Defendant asserts that the Court should conduct trial before entering judgment, disputes the allegations of the Complaint, and requests that the action be dismissed.

Defendant has not shown cause for dismissal of the action. The request for dismissal is denied. Defendant will be provided an opportunity to present a defense during the course of the litigation. Defendant's objection to the Bankruptcy Court's entry of final judgment, set forth in the Joint Status Report, is **OVERRULED**. This is a Complaint objecting to dischargeability of specific indebtedness and objecting to the entry of Defendant's discharge, over which the Court has core jurisdiction.

Having reviewed the Joint Status Report submitted by the parties, the Court **HEREBY ORDERS** as follows:

- 1) Defendant shall file an Answer to the First Amended Complaint by no later than **February 26, 2019**.
- 2) The litigation deadlines previously ordered by the Court shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **3/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/02/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert

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CONT...

GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

witness reports is **8/01/2019**.

- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/13/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **8/20/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/31/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **9/10/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be

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CONT...

GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1.

The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii).

i) Trial is set for the week of **9/30/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

3) This matter shall be referred to the Mediation Panel. The Court will prepare and enter an order selecting a Mediator. Upon receipt of the order, the parties shall contact the Mediator and arrange to conduct mediation. The Court's Mediation Program allows the parties to attend one day of mediation free of charge.

The Court will prepare and enter a Scheduling Order and a Mediation Order.

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

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#7.00 Status Hearing
RE: [21] Amended Complaint 2nd Amended by Michael N Berke on behalf of Joseph Amin against Kami Emein. (Berke, Michael)

fr: 12-11-18

Docket 21

Tentative Ruling:

2/11/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered by the Court shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **3/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/02/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/01/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/13/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **8/20/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

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CONT...

Kami Emein

Chapter 7

- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/31/2019**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)
- g) A Pretrial Conference is set for **9/10/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

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CONT...

Kami Emein

Chapter 7

- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii).
- i) Trial is set for the week of **9/30/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the Mediation Order.

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

Party Information

Debtor(s):

Kami Emein

Represented By

Jacques Tushinsky Fox

Defendant(s):

Kami Emein

Represented By

TJ Fox

Plaintiff(s):

Joseph Amin

Represented By

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CONT... Kami Emein

Michael N Berke

Chapter 7

Trustee(s):

John J Menchaca (TR)

Represented By
Uzzi O Raanan ESQ
Sonia Singh

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10:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#8.00 Status HearingRE: [1] Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lin, Zi)

Docket 1

Tentative Ruling:

2/11/2019

Defendants have not Answered the Complaint. In his Unilateral Status Report, the Trustee states that he is considering filing an Amended Complaint.

Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) A continued Status Conference shall be held on **April 16, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 2) The litigation deadlines previously ordered by the Court shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **3/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/02/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/01/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/13/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the

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CONT...

Jenny Melendez

Chapter 7

court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- e) The last day for dispositive motions to be heard is **8/20/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/31/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **9/10/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing

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CONT...

Jenny Melendez

Chapter 7

- citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii).
 - v) Trial is set for the week of **9/30/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Clara E Melendez, an individual

Pro Se

DOES 1-20

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

CONT... Jenny Melendez

Chapter 7

Jenny Melendez, an individual

Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By

Adjoa Anim-Appiah

Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By

Zi Chao Lin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#9.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18;
8-14-18

Docket 0

Tentative Ruling:

2/11/2019

Tentative Ruling: Appearances required.

Pleadings Filed and Reviewed

1. Reorganized Debtor's Post Confirmation Status Conference Report [Doc. No. 327]
2. Reorganized Debtor's Post Confirmation Status Conference Report [Doc. No. 331]

This is a post-confirmation status conference. On August 3, 2018, Debtor filed a post-confirmation status report stating that she was working to resolve certain accounting issues with respect to Class 3 secured creditor Ocwen Loan Servicing [Doc. No. 327] (the "August 2018 Report"). Debtor stated that if she were able to successfully resolve those issues, she would seek entry of a final decree closing this case, but if she were unsuccessful at resolving those issues, she would move the Court for an order requiring compliance under the confirmed plan. *Id.* Based on those representations, the Court continued the post-confirmation status conference to February 12, 2019.

On February 1, 2019, Debtor filed a post-confirmation status report [Doc. No. 331] (the "February 2019 Report"). However, the February 2019 Report appears to be identical to the August 2018 Report and does not provide any update on what efforts the Debtor has undertaken in the past six months to resolve her dispute with Ocwen Loan Servicing. Furthermore, the Court notes that on February 5, 2019, Debtor's counsel filed a motion to withdraw as counsel [Doc. No. 333] and scheduled a hearing

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10:00 AM

CONT... Sondra Derderian
for March 5, 2019.

Chapter 11

Accordingly, Debtor's counsel is directed to appear to provide this Court with an update on the status of the accounting issues with Ocwen Loan Servicing. Failure to appear may result in this Court dismissing this case without further notice or hearing for failure to appear in proper prosecution.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

2:12-36594 Fusione, Inc.

Chapter 11

#10.00 Post Confirmation status conference re [216]

FR. 2-17-15; 2-19-15; 9-9-15; 11-17-15; 2-17-16; 6-14-17; 10-11-17; 2-14-18;
8-14-18

Docket 0

Tentative Ruling:

2/11/2019

Tentative Ruling: Appearances required.

Pleadings Filed and Reviewed

1. Post-Confirmation Status Report No. 8 [Doc. No. 305]
2. Notice of Motion and Motion in Chapter 11 Case for the Entry of A Final Decree and Order Closing Case [Doc. No. 308]

This is a post-confirmation status conference. The Court has reviewed the Debtor's Post-Confirmation Status Report No. 8 [Doc. No. 305] which states that the Debtor "is unable to project a date of final decree on the basis that the Plan payments to its creditors will extend into the year 2020" and "proposes an interim closure . . . on the basis that the chapter 11 estate is substantially consummated, but not fully administered." These representations conflict with the representations set forth in the Debtor's recently filed motion for entry of a final decree and order closing case [Doc. No. 308], which states that the bankruptcy case has been fully administered and seeks an order closing the case on a final basis.

Debtor's counsel is directed to appear to address these inconsistencies. Failure to appear may result in this Court dismissing this case without further notice or hearing for failure to appear in proper prosecution.

Party Information

Debtor(s):

Fusione, Inc.

Represented By

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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

CONT... Fusione, Inc.

Chapter 11

Marta C Wade
Sandford Frey
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#11.00 Status Hearing RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

2/11/2019

This action has settled. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) By no later than **March 15, 2019**, the Committee shall file a motion seeking approval of the settlement (the "Rule 9019 Motion").
- 2) A Continued Status Conference is set for **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 3) The litigation deadlines previously set by the Court are VACATED.

The Court will prepare and enter an appropriate order.

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

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#12.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 12-11-18

Docket 1

Tentative Ruling:

2/11/2019The parties represent that they are engaged in extensive settlement negotiations. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) To provide the parties a further opportunity to settle this action, a continued Status Conference is set for **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 2) The litigation deadlines previously set by the Court are VACATED. In the event the action does not settle by the May 14, 2019 Status Conference, the Court will set new litigation deadlines.

The Court will prepare and enter an appropriate order.

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

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 12, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. United States

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordan Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 1-15-19

Docket 1

Tentative Ruling:

2/11/2019

On January 3, 2019, the Court entered an *Order Staying This Adversary Proceeding Due to the Lapse in Appropriations* [Doc. No. 46] (the "Stay Order"). The Stay Order left this Status Conference on calendar.

Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The stay of this proceeding is lifted.
- 2) A continued Status Conference is set for **April 16, 2019, at 10:00 a.m.** A Joint Status Report, which shall discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing.
- 3) The litigation deadlines set by way of the Scheduling Order issued on October 9, 2018 [Doc. No. 28] shall remain in effect.

The Court will prepare and enter an appropriate order.

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

**United States Bankruptcy Court
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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

United States Department of Health

Represented By
Elan S Levey

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

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

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 10-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

Docket 1

***** VACATED *** REASON: CONTINUED 6-11-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon	Pro Se
BJ Mobile, Inc., a California	Pro Se
JETWORLD, Inc., a California	Pro Se
JW Wireless OKC, an Oklahoma	Pro Se
JWK Management, Inc., a California	Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... JW Wireless Inc. Chapter 7

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR) Represented By
Robert P Goe

**United States Bankruptcy Court
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:17-25586 Soheil Khanian

Chapter 7

Adv#: 2:18-01080 Khankhanian v. Khanian

#102.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01080. Complaint by Bahram Khankhanian against Soheil Khanian . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr: 1-15-19

Docket 1

Tentative Ruling:

2/11/2019

The Court approves the *Joint Pretrial Stipulation* submitted by the parties. The *Joint Pretrial Stipulation* shall be entered as the Pretrial Order, and shall govern trial of this action, unless modified to prevent manifest injustice.

Trial shall take place on **Monday, February 25, 2019, commencing at 9:00 a.m.** The trial materials set forth in the *Order Re: Courtroom Procedures* [Doc. No. 4] shall be submitted by no later than **Thursday, February 14, 2019** (seven court days prior to trial).

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

Party Information

Debtor(s):

Soheil Khanian

Represented By

**United States Bankruptcy Court
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Tuesday, February 12, 2019

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11:00 AM

CONT... Soheil Khanian

Chapter 7

Mitchell R Sussman

Defendant(s):

Sohiel Khanian

Pro Se

Plaintiff(s):

Bahram Khankhanian

Represented By
Dean P Sperling

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:17-25674 John E Bennett

Chapter 7

Adv#: 2:18-01089 First National Bank Of Omaha v. Bennett

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01089. Complaint by First National Bank Of Omaha against John Bennett. false pretenses, false representation, actual fraud)) (Rooney, Cory)

Docket 1

***** VACATED *** REASON: DISMISSED ON 5-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Bennett

Represented By
David R Hagen

Defendant(s):

John Bennett

Pro Se

Joint Debtor(s):

Deborah Bennett

Represented By
David R Hagen

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#104.00 Pre-Trial Conference RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

Tentative Ruling:

2/11/2019

For the reasons set forth below, the two *Motions In Limine*, the *Motion to Revoke Discharge*, and the *Motion Regarding the Sufficiency of an Answer or Objection* are DENIED. The Court will try this matter on **April 8 and April 10, 2018 at 9:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Plaintiffs' Motion *In Limine* Re: Documents Attached to December 2018 Email:
 - a) Plaintiffs' Notice of Motion and Motion *In Limine* as to the 82 Documents Attached to Debtor's December 31, 2018 Email [Doc. No. 29]
 - i) Certificates of Service [Doc. Nos. 30 and 34]
 - b) Opposition to Motion *In Limine* as to the 82 Documents Attached to Debtor's December 31, 2018 Email [Doc. No. 51]
 - c) Plaintiffs' Reply to Defendant's Opposition to Motion *In Limine* as to the 82 Documents Attached to Defendant's December 31, 2018 Emails [Doc. No. 55]
- 2) Plaintiffs' Motion *In Limine* Re: Documents Attached to January 2019 Email:
 - a) Plaintiffs' Notice of Motion and Motion *In Limine* as to the 42 Documents Attached to Debtor's January 13, 2019 Email Titled "Text Messages" [Doc. No. 23]
 - i) Certificate of Service [Doc. No. 35]
 - b) Opposition to Motion *In Limine* as to the 42 Documents Attached to Debtor's January 13, 2019 Email Entitled "Text Messages" [Doc. No. 50]
 - c) Plaintiffs' Reply to Defendant's Opposition to Motion *In Limine* as to the 42 Documents Attached to Defendant's January 13, 2019 Email Titled "Text

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11:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

Messages" [Doc. No. 56]

- 3) Plaintiffs' Motion Re: Sufficiency of an Answer or Objection:
 - a) Plaintiffs' Notice of Emergency Motion and Motion Regarding the Sufficiency of an Answer or Objection Pursuant to FRCP 36(a)(6) [Doc. No. 41]
 - i) Certificate of Service [Doc. No. 42]
 - ii) Order: (1) Setting Hearing on Plaintiffs' Discovery Motion for February 12, 2019, at 11:00 a.m. and (2) Rescheduling Hearings on Related Motion in Limine and Motion to Vacate Discharge From February 13, 2019 at 1:00 a.m. to February 12, 2019 at 11:00 a.m. [Doc. No. 45]
 - (1) Application for Order Setting Hearing on Shortened Notice [Doc. No. 37]
 - iii) Declaration of Nick A. Urick, Esq. in Support of the Court's 1/25/19 Order [Doc. No. 52]
 - b) Preliminary Opposition to Emergency Motion Regarding the Sufficiency of Defendant's Responses to Plaintiff Basilio Torices's First Request for Admissions [Doc. No. 44]
 - c) Supplemental Opposition to Emergency Motion Regarding the Sufficiency of Defendant's Responses to Plaintiff Basilio Torices's First Request for Admissions [Doc. No. 48]
 - i) Declaration of Christina Uzeta in Support of Supplemental Opposition to Emergency Motion Regarding the Sufficiency of Defendant's Responses to Plaintiff Basilio Torices's First Request for Admissions [Doc. No. 49]
 - d) Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion Regarding the Sufficiency of an Answer or Objection Pursuant to FRCP 36(a)(6) [Doc. No. 57]
- 4) Plaintiffs' Motion for an Order Vacating Debtor's Discharge:
 - a) Plaintiffs' Notice of Motion and Motion for an Order Vacating Debtor's Discharge Pursuant to Rule 7001 [Doc. No. 39]
 - b) Opposition to Motion for Order Vacating Discharge [Doc. No. 36]
 - i) Declaration of Christina Uzeta in Support of Opposition to Motion for Order Vacating Discharge [Doc. No. 43]
 - c) Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Notice of Motion and Motion for an Order Vacating Debtor's Discharge Pursuant to Rule 7001 [Doc. No. 58]
 - i) Declaration of Plaintiff Roxanne Martinez in Support of Plaintiffs' Motion for an Order Vacating Debtor's Discharge Pursuant to Rule 7001 [Doc.

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Hearing Room 1568

11:00 AM

CONT... **Christina Marie Uzeta**
No. 59]

Chapter 7

5) Notice of Lodgment of Pretrial Stipulation [Doc. No. 53]

I. Facts and Summary of Pleadings

Basilio Torices and Roxanne Martinez ("Plaintiffs") commenced this *Complaint to Determine the Dischargeability of Debts Pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and/or (a)(6)* [Doc. No. 1] (the "Complaint") against Christina M. Uzeta (the "Defendant") on April 16, 2018. Defendant commenced a voluntary Chapter 7 petition on January 12, 2018, and received a discharge on June 4, 2018. Bankr. Doc. No. 21. Defendant's bankruptcy case was closed on July 5, 2018. Bankr. Doc. No. 23.

A. Summary of the Complaint's Allegations

The Complaint's factual allegations may be summarized as follows:

Defendant operated a restaurant known as Redwood Bar & Grill ("the Restaurant"), located in Covina, California. Complaint at ¶ 17. To facilitate Plaintiffs' desire to invest in the Restaurant, Plaintiffs and Defendant entered into a transaction in December 2016. The transaction contemplated the transfer of the Restaurant's assets into a new entity, Redwood Restaurant Group ("Redwood"). *Id.* at ¶ 15. On December 7, 2016, Plaintiff Torices purchased 2,500 shares in Redwood for \$2,500. *Id.* at ¶ 17. On December 7, 2016, Plaintiff Martinez purchased 2,499 shares in Redwood for \$2,499. *Id.* at ¶ 18.

On December 21, 2016, Redwood's Articles of Incorporation were filed with the California Secretary of State. *Id.* at ¶ 19. Plaintiffs paid \$948 to Legal Zoom to form Redwood. *Id.* at ¶ 20. On December 27, 2016, 49.99% of Redwood's shares were transferred to Plaintiffs, and 50.01% of Redwood's shares were transferred to Defendant. *Id.* at ¶ 22.

Assets of the Restaurant included (1) a liquor license worth \$80,000 (the "Liquor License"), which was held in Defendant's name, and (2) various equipment, including televisions, kitchen equipment, pool tables, bar stools, and booths, collectively worth \$160,000 (the "Restaurant Equipment"). *Id.* at ¶¶ 28 and 65.

An express condition of Plaintiffs' purchase of a 49.99% interest in Redwood for \$4,999 was that the Liquor License would be transferred to Redwood. *Id.* at ¶¶ 56–57 and 72. On June 23, 2017, Plaintiffs and Defendant executed an escrow agreement providing for the transfer of the Liquor License to Redwood. *Id.* at ¶ 28. Before the transfer of the Liquor License could be completed, Defendant caused the Liquor

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11:00 AM

CONT... Christina Marie Uzeta

Chapter 7

License to be withdrawn from escrow. *Id.* at ¶ 62. On June 26, 2017, Defendant advised Plaintiff Torices that she would not transfer the Liquor License to Redwood unless Plaintiffs contributed \$5,000 toward the Restaurant's rent. *Id.* at ¶ 35.

On December 20, 2016, Plaintiffs loaned Defendant \$10,000. *Id.* at ¶ 25. The funds were to be used to pay down Defendant's indebtedness to the State Board of Equalization, which gave rise to a lien against the Liquor License. *Id.* at ¶ 26. On May 2, 2017, Plaintiffs loaned Defendant \$3,900. *Id.* at ¶ 27. The funds were to be used toward the Restaurant's rental expenses. *Id.*

On January 23, 2017, Redwood entered into two 36-month leases with Ladco Financial Group ("Ladco"), under which it leased equipment to process sales and payments (the "Sales Equipment"). *Id.* at ¶23. The Sales Equipment consisted of cash drawers, credit card readers, receipt printers, and iPads. *Id.* at ¶47.

On August 14, 2017, Defendant filed a *Certificate of Election to Wind Up and Dissolve* (the "Certificate of Election") on Redwood's behalf with the California Secretary of State (the "Secretary of State"). *Id.* at ¶ 37. The Certificate of Election falsely stated that an election to dissolve Redwood had been held, even though no such election had occurred. *Id.*

On August 14, 2017, Defendant filed a *Certificate of Dissolution* (the "Certificate of Dissolution") on Redwood's behalf with the Secretary of State. *Id.* at ¶ 38. The Certificate of Dissolution falsely stated that Redwood had never incurred any debts or liabilities. In fact, Redwood had incurred liabilities in connection with the lease of Sales Equipment from Ladco. *Id.*

After dissolving Redwood, Defendant retained the Sales Equipment, which is worth in excess of \$4,052.68. *Id.* at ¶ 82. Defendant retained the Sales Equipment notwithstanding Plaintiffs' written demand for return of said equipment, made on February 1, 2018. *Id.* at ¶ 83.

After dissolving Redwood, Defendant retained the Restaurant Equipment. *Id.* at ¶ 96.

Based upon the foregoing allegations, the Complaint asserts the following claims for relief:

Defendant committed fraud and defalcation within the meaning of § 523(a)(4) by unilaterally dissolving Redwood, by retaining the Sales Equipment and the Restaurant Equipment, and by failing to transfer the Liquor License to Redwood. Defendant is liable to Plaintiffs in the amount of \$80,000 on account of her failure to transfer the

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Liquor License, in the amount of \$160,000 on account of the retention of the Restaurant Equipment, and in an amount exceeding \$4,052.68 on account of the retention of the Sales Equipment.

Defendant committed willful and malicious injury to Plaintiffs' property, within the meaning of § 523(a)(6), by retaining the Sales Equipment and Restaurant Equipment, and by failing to transfer the Liquor License.

Defendant made false representations to Plaintiffs, within the meaning of § 523(a)(2)(A), to induce Plaintiffs to invest \$4,999 in Redwood. Specifically, Defendant represented that she intended to transfer the Liquor License to Redwood, even though she never intended to do so. Defendant's false representations have damaged Plaintiffs in the amount of \$80,000, the value of the Liquor License.

B. Summary of Papers Filed in Connection with Plaintiffs' Motion to Revoke Defendant's Discharge

Plaintiffs move to revoke Defendant's discharge pursuant to § 727(d). Plaintiffs allege that Defendant knowingly and fraudulently understated the value of the Liquor License in amended schedules filed on March 27, 2018. According to Plaintiffs, Defendant stated on her amended schedules that the Liquor License was worth only \$13,500, even though she was attempting to sell the Liquor License for \$80,000. Plaintiffs allege that Defendant repeatedly attempted to structure a sale of the Liquor License that would evade the \$13,800 statutory limit on the sales price by using relatives and acquaintances, who would receive a fraudulent "finder's fee."

Defendant denies making any false statements with respect to the value of the Liquor License, and denies attempting to sell the Liquor License for \$80,000. Defendant contends that the motion to revoke her discharge should be denied as procedurally defective, because Plaintiffs seek discharge revocation by way of motion, not by way of an adversary proceeding as required by Bankruptcy Rule 7001. Finally, Defendant asserts that Plaintiffs were aware of the facts supporting their allegations of fraud since the inception of Defendant's bankruptcy case, and that consequently Plaintiffs' request for discharge revocation is time-barred.

In Reply, Plaintiffs assert that they did not become aware of Defendant's attempts to sell the Liquor License for \$80,000 until June 2018, after Defendant had received a discharge.

C. Summary of Papers Filed in Connection with Motion *In Limine* Re: Documents Attached to December 2018 Email

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Plaintiffs move to exclude 82 documents that were produced by Defendant in an e-mail dated December 31, 2018. Plaintiffs contend that the documents should be excluded for the following reasons:

- 1) In e-mails dated May 14, 2018 and December 4, 2018, Plaintiffs notified Defendant that they would not accept electronic service of documents disclosed during discovery, and would only accept service of such documents via U.S. mail. Notwithstanding this notification, Defendant did not serve the documents via U.S. mail. Civil Rule 26(a)(4) requires that disclosures be served by U.S. mail, unless a party consents to electronic service.
- 2) The documents produced by Defendant include 61 photographs, none of which are time stamped. These photographs go to the issue of the condition of the Restaurant Equipment. Defendant sold, gave away, lost, or destroyed \$160,000 worth of the Restaurant Equipment. Introduction of the photographs without corresponding time-stamps would be prejudicial to the Plaintiffs. The photographs should be excluded for lack of sufficient authentication under Federal Rule of Evidence ("FRE") 901 and as duplicates whose authenticity has not been established under FRE 1003.
- 3) Defendant produced a document clearly labeled "protected settlement negotiations" (the "Settlement Document"). The Settlement Document is inadmissible under FRE 408.
- 4) Defendant produced a document title "Story.docs," which is a letter from Defendant to her attorney commenting on the litigation. The document is inadmissible hearsay and is irrelevant.

Defendant makes the following arguments in Opposition to the Motion:

- 1) The Motion should be denied because it was not supported by a declaration, as required by LBR 9013-1(c)(3).
- 2) Plaintiffs' contention that Defendant did not properly serve the documents as required by Civil Rule 26(a)(4) lacks merit. The documents were produced pursuant to the *Scheduling Order* issued by the Court on July 18, 2018, not pursuant to Civil Rule 26(a)(4).
- 3) The Settlement Document is not privileged because Defendant received this document from Plaintiffs as part of their Rule 7026 disclosures.
- 4) The Motion places form over substance, and is an example of Plaintiffs'

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attempts to bully Defendant and litigate by intimidation. Defendant should be awarded attorneys' fees of \$1,650 for being required to defend against the Motion.

Plaintiffs make the following arguments in Reply to Defendant's Opposition:

- 1) Defendant's representation that Plaintiffs disclosed the Settlement Document is false. Every document Plaintiffs disclosed under Civil Rule 7026 was Bates numbered. The Settlement Document is not Bates numbered.
- 2) Plaintiffs were not required to support the Motion with a declaration. Bankruptcy Rule 9006(d) contemplates that not all Motions will contain supporting declarations. Rule 9006(d) provides: "*When* a motion is supported by affidavit, the affidavit shall be served with the motion" (emphasis added). The exhibits attached to the Motion provided all the evidentiary support that was necessary.
- 3) The manner in which Defendant has disclosed the documents has made it very difficult for Plaintiffs to identify which documents Defendant intends to offer as exhibits at trial. The documents disclosed via e-mail containing perplexing file names, such as "file4(1).jpeg" and "file1-1.png." The exhibit list provided by Defendant contains descriptions of the documents, such as "Amendment to Lease 6/14/2017" and "VAAC email 1/14/2019." Plaintiffs have no way of correlating the documents disclosed via e-mail with the descriptions on Defendant's Exhibit List.
- 4) Plaintiffs should be awarded \$1,750 in sanctions, pursuant to Civil Rules 26(g)(3) and 37(c)(1)(A), based upon Defendant's failure to comply with Civil Rule 7026.

D. Summary of Papers Filed in Connection with Motion *In Limine* Re: Documents Attached to January 2019 Email

Plaintiffs move to exclude 42 documents that were produced by Defendant in an e-mail dated January 13, 2019. [Note 1] Plaintiffs contend that the documents should be excluded for the following reasons:

- 1) The documents consist of photographs of a cell phone showing text messages. The text messages are not legible. The photographs contain additional written text in addition to the purported text messages. This additional text appears to

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have been written by the Defendant to her attorney.

- 2) Under FRE 1003, a duplicate is admissible to the same extent as an original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. Here, there are genuine questions as to authenticity because of the illegibility of the text messages. In addition, it would be unfair to admit the photographs because of the additional written comments by the Defendant.

Defendant makes the following argument in Opposition to the Motion:

- 1) There is no merit to Plaintiffs' argument that the text messages are inadmissible because they are duplicates. The only way for Defendant to produce an original would be for Defendant to produce her cell phone, which she can do. Apparently Plaintiffs are unaware that text messages and photographs of cell phones are routinely used in court proceedings.

Plaintiffs make the following arguments in Reply to Defendant's Opposition:

- 1) Defendant has failed to address the authenticity of the documents under FRE 1003. The documents are pictures of a cell phone; the text message data on the phone is completely illegible.
- 2) Defendant has also failed to address the fact that the additional written statements contained in the photographs makes introduction of the photographs highly prejudicial to Plaintiffs.

E. Summary of Papers Filed in Connection with Plaintiffs' Motion Regarding the Sufficiency of an Answer or Objection

Plaintiffs assert that certain of Defendant's responses to Plaintiffs' Requests for Admission (the "RFAs") are insufficient. Plaintiffs seek an order deeming the allegedly deficient responses admitted. Plaintiffs argue that such relief is warranted for the following reasons:

- 1) Defendant objected to the relevance of 53 of the 92 RFAs. Defendant's relevance objections did not conform to Civil Rule 26(b)(1). Specifically, Defendant's objections stated that the RFAs were "not likely to lead to the discovery of admissible evidence" These objections were not in

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conformance with the 2015 amendments to Civil Rule 26(b)(1), which now provides that discovery is limited to information "proportional to the needs of the case." The "not reasonably calculated to lead to the discovery of admissible evidence" objection is no longer available under Civil Rule 26(b)(1). *See Fischer v. Forrest*, 2017 WL 773694, at *3 ("The 2015 amendments deleted that language from Rule 26(b)(1), and lawyers need to remove it from their jargon").

- 2) Defendant objected that certain RFAs were vague and ambiguous. It is not ground for objection that the request is ambiguous unless the responding party cannot, in good faith, frame an intelligent reply. Parties should "admit to the fullest extent possible, and explain in detail why other portions of a request may not be admitted." *U.S. ex rel. Englund v. L.A. Cnty.*, 235 F.R.D. 675, 684 (E.D. Cal. 2006).
- 3) Defendant objected to RFAs 67, 77, and 84 on the ground that "no time frame was given." The time frame referred to in these RFAs was obvious because the RFAs referred to ESCROW 2, a document disclosed to Defendant from which the relevant time frame was apparent. Defendant's objection was in bad faith.

Defendant makes the following arguments in Opposition to the Motion:

- 1) The Motion is not supported by a declaration as required by LBR 9013-1(c).
- 2) The Motion is time-barred by the Court's July 18, 2018 *Scheduling Order*, which required that all discovery motions be heard by no later than January 26, 2019.
- 3) The Motion violates LBR 7026-1(c)(3), because Plaintiffs never sent the required discovery stipulation.
- 4) Defendant's responses to the RFAs are sufficient. Defendant admitted or denied most of the RFAs. As to those RFAs which were not admitted or denied, Defendant interposed a proper objection. Even as to those RFAs to which Defendant objected, Defendant still admitted or denied the RFA.
- 5) Defendant should be awarded attorneys' fees of \$2,850 for defending against the Motion.

Plaintiff makes the following arguments in Reply to Defendant's Opposition:

- 1) The Motion does not violate the Court's July 18, 2018 *Scheduling Order*

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because the Court set the Motion for hearing after Plaintiffs filed an application seeking a hearing on the Motion on shortened notice.

- 2) The Motion does not violate LBR 7026-1(c). A discovery stipulation was not necessary because Defendant refused to cooperate in preparing such a stipulation.
- 3) Defendant objected to the relevance of RFAs pertaining to Defendant's attempts to sell the Liquor License. The value of the Liquor License is highly relevant to Plaintiffs' claims. Defendant also objected to the relevance of RFAs pertaining to "Fire Insurance Inventory," a term defined in Plaintiffs' Complaint. These RFAs were relevant because the Complaint alleges that Plaintiffs are entitled to the Fire Insurance Inventory.

II. Findings and Conclusions

A. Plaintiffs' Motion to Revoke Defendant's Discharge is Denied as Procedurally Improper

Bankruptcy Rule 7001(4) provides that a proceeding to revoke a discharge is an adversary proceeding. As explained by the treatise:

Whether a discharge should be granted, or once granted whether it should be revoked, is likely to become the subject of contested litigation. Given the importance of the result to the participants, clause (4) of Rule 7001, with certain exceptions, requires that such litigation be brought in the form of an adversary proceeding subject to the rules of Part VII.

10 Collier on Bankruptcy ¶ 7001.05 (16th ed. 2018).

Here, Plaintiffs seek revocation of Defendant's discharge by way of a motion brought within a separate § 523 action. Plaintiffs have failed to meet the procedural requirements of Bankruptcy Rule 7001(4). To seek revocation of Defendant's discharge, Plaintiffs are required to initiate a separate adversary complaint against Defendant. A motion filed within a pre-existing adversary proceeding is not adequate, because motions are litigated on an abbreviated timeframe without a meaningful opportunity to take discovery. The more formal procedures associated with a separate adversary proceeding are required to determine an issue of this significance. The Motion is DENIED. The denial is without prejudice to Plaintiffs' ability to file a § 727(d) complaint against the Defendant.

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B. Plaintiffs' Motion in Limine Re: Documents Attached to December 2018 E-mail is Denied

Civil Rule 26(a)(4) provides that all disclosures required under Civil Rule 26 must "be in writing, signed, and served." Civil Rule 5(b) sets forth various means by which service may be accomplished. Under Civil Rule 5(b)(2)(C), service may be accomplished by U.S. mail. Under Civil Rule 5(b)(2)(E), service may be accomplished by electronic means, but only "if the person consented in writing" Civil Rule 37(c)(1) provides that if "a party fails to provide information ... as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."

There is no dispute that Defendant served documents electronically, and that Plaintiffs have not consented to electronic service. Thus, Defendant's service was not in strict compliance with the requirements of Civil Rule 26(a)(4).

However, it does not follow that Plaintiffs are automatically entitled to exclusion of all the documents that Defendant served electronically. Plaintiffs' Motion is itself not in strict compliance with the applicable rules. LBR 9013-1(i) provides in relevant part:

Factual contentions involved in any motion, opposition or other response to a motion, or reply, must be presented, heard, and determined upon declarations and other written evidence. The verification of a motion is not sufficient to constitute evidence on a motion, unless otherwise ordered by the court.

None of the factual contentions in the Motion were supported by declaration testimony. The exhibits attached to the Motion are not admissible as evidence because they were not authenticated by a supporting declaration. In sum, Plaintiffs failed to supply any admissible evidence in support of the relief requested in the Motion.

Plaintiffs contend that a declaration was not required. Plaintiffs cite Bankruptcy Rule 9006(d), which contemplates that not all motions need be supported by a declaration: "*When* a motion is supported by affidavit, the affidavit shall be served with the motion" (emphasis added). Plaintiffs' reliance upon Bankruptcy Rule 9006(d) is unavailing. The more specific LBR 9013-1(i) clearly specifies that all factual contentions in support of a motion must be supported by "declarations and other written evidence."

The Motion's evidentiary defects are not obviated by Plaintiffs' inclusion of a

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declaration in its Reply in support of the Motion. The declaration attached to the Reply addresses only issues raised in Plaintiffs' Opposition, does not authenticate the exhibits offered in support of the Motion, and does not otherwise establish the facts attested to in the Motion. Even if the declaration supporting the Reply did provide a sufficient evidentiary basis for the Motion, such evidence could not be considered. LBR 9013-1(g) provides that "matters raised for the first time in reply documents will not be considered."

The Motion also fails to comply with the requirements of LBR 7026-1(c). LBR 7026-1(c) applies to any dispute arising under Civil Rules 7026–37. The instant Motion falls within the ambit of the rule, as it seeks exclusion of exhibits pursuant to Civil Rules 26(a)(4) and 37(c)(1).

LBR 7026-1(c)(2) requires that the parties meet and confer prior to filing any motion seeking relief under Civil Rules 7026–37:

Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.

Even if the Court were to consider the unauthenticated exhibits attached to the Motion, there is no indication that Plaintiffs complied with the requirements imposed by LBR 7026-1(c)(2). Exhibit A consists of a letter which advises Defendant that "Plaintiffs will be objecting to any document Debtor uses at trial that has not been disclosed pursuant to and in strict conformance with Rule 7026, as none of Debtor's disclosures thus far have conformed with Rule 7026." The letter does not qualify as a "meet-and-confer" request within the meaning of LBR 7026-1(c)(2), as it contains no invitation to meet and confer to resolve the issue, and is instead limited to advising Defendant of Plaintiffs' intent to object.

Plaintiffs' Motion states that prior to sending the letter reproduced in Exhibit A, Plaintiffs had e-mailed Defendant and requested that the Rule 7026 disclosures be sent by U.S. mail. This representation is not supported by any declaration testimony. Even if the Court were to assume that this representation is correct, Plaintiffs were

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still required to conduct a Rule 7026 conference with Defendant before filing the Motion. Plaintiffs' apparent belief that such a conference would have been futile does not remove the obligation to conduct the conference.

Both Plaintiffs and Defendant request that the opposing side be required to pay sanctions. The Court cautions both parties that it looks with disfavor upon requests for sanctions. The Court understands the adversarial position of the parties. However, requests for sanctions are seldom an appropriate means of advancing a party's position in the litigation. The Court will impose sanctions only if all procedural requirements have been fastidiously complied with, and then only if the party against whom sanctions are sought has engaged in egregiously improper conduct. Plaintiffs' and Defendant's request for sanctions are both denied.

C. Plaintiffs' Motion in Limine Re: Documents Attached to January 2019 E-mail is Denied

Plaintiffs' Motion *In Limine* pertaining to the documents attached to Defendant's January 2019 e-mail suffers from the same defects as Plaintiffs' similar motion pertaining to the documents attached to the December 2018 e-mail. Specifically, the Motion's factual contentions are not supported by any admissible evidence, and there is no indication that Plaintiffs engaged in the required Rule 7026 conference prior to filing the Motion. For these reasons, the Motion is denied. The requests for sanctions made by both Plaintiffs and Defendant are denied.

D. Plaintiffs' Motion Regarding the Sufficiency of an Answer or Objection is Denied

On July 18, 2018, the Court issued a *Scheduling Order* setting forth the deadlines governing the litigation (the "Scheduling Order"). The Scheduling Order provided that the "last day to complete discovery (except as to experts), including hearings on discovery motions, is 1/26/2019." Scheduling Order at ¶ 1(f). In a footnote, the Scheduling Order explained that if the "non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring."

Because the January 26, 2019 discovery motion cutoff date was not available for self-calendaring, the deadline for discovery motions to be heard was the next closest previous date that was available for self-calendaring—in this case, January 23, 2019. Defendant filed the instant discovery motion on January 24, 2019. On January 25, 2019, the Court issued an order setting the motion for hearing on February 12, 2019,

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concurrently with other motions in this action (the "Order").

Civil Rule 16(b)(4) provides that a scheduling order "shall not be modified except upon a showing of good cause and by leave of the ... judge." Civil Rule 16's "good cause" standard "primarily considers the diligence of the party seeking the amendment. The ... court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson*, 975 F.2d at 609.

Plaintiffs have not shown good cause for their failure to set the Motion for hearing on or before January 23, 2019. Plaintiffs had approximately seven months' notice of this deadline. Nothing prevented Plaintiffs from serving their RFAs upon Defendant at an earlier date, so that they would have sufficient time to bring a discovery motion, if necessary. Because the Motion was not timely filed, the Court declines to grant the relief requested therein.

Plaintiffs contend that Defendant's ability to object to the timeliness of the Motion has been waived by the Order setting the Motion for hearing. Nothing within the Order precluded Defendant from objecting to the Motion's timeliness or otherwise indicated that the Court had elected to disregard Plaintiffs' failure to meet the deadlines set forth in the Scheduling Order. All that the Order did was set a hearing date on the Motion.

E. Modifications Made by the Court to the Proposed Pretrial Order

The Court has made extensive modifications to the proposed Pretrial Order (the "Proposed Pretrial Order") submitted by the parties. The reasons for the Court's modifications are set forth below.

Section 523(a)(4)

The Complaint alleges that Defendant committed fraud or defalcation, pursuant to § 523(a)(4), by violating her fiduciary duties to Redwood, a California corporation. These alleged fiduciary duty violations consist primarily of Defendant's failure to transfer the Liquor License to Redwood and her retention of the Restaurant Equipment and Sales Equipment.

Section 523(a)(4) excepts from discharge a debt "for fraud or defalcation while acting in a fiduciary capacity." To prevail on a nondischargeability claim under § 523(a)(4) the Plaintiffs must prove: "1) an express trust existed, 2) the debt was caused by fraud or defalcation, and 3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *Mele v. Mele (In re Mele)*, 501 B.R. 357, 363 (B.A.P.

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9th Cir. 2013) (quoting *Otto v. Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997)). Plaintiffs must show "not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation." *Honkanen v. Hopper (In re Honkanen)*, 446 B.R. 373, 378 (B.A.P. 9th Cir. 2011) (citations omitted).

Federal bankruptcy law determines whether a fiduciary relationship exists within the meaning of §523(a)(4). *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1125 (9th Cir. 2003). For purposes of §523(a)(4), the fiduciary relationship "must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt." *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996).

As the Ninth Circuit has explained, a director of a California corporation is not a trustee with respect to the corporation's assets:

[I]n *Bainbridge v. Stoner*, 16 Cal.2d 423, 106 P.2d 423 (1940), the California Supreme Court held:

"One who is a director of a corporation acts in a fiduciary capacity, and the law does not allow him to secure any personal advantage as against the corporation or its stockholders. However, strictly speaking, the relationship is not one of trust, but of agency...." *Id.* at 426 (citations omitted); *see also Bancroft-Whitney Co. v. Glen*, 64 Cal.2d 327, 49 Cal.Rptr. 825, 411 P.2d 921, 934 (1966) (stating that while officers and directors stand in a fiduciary relation to the corporation, they are "technically not trustees").

Therefore, under *Bainbridge*, although officers and directors are imbued with the fiduciary duties of an agent and certain duties of a trustee, they are not trustees with respect to corporate assets.

In re Cantrell, 329 F.3d 1119, 1126 (9th Cir. 2003).

The parties dispute whether Defendant was the President or the Secretary of Redwood. Regardless of Defendant's role, Plaintiffs are not entitled to relief on their § 523(a)(4) claim, because a director of a California corporation lacks the fiduciary relationship necessary under § 523(a)(4). As explained in *Cantrell*, the director's fiduciary relationship does not arise from an express or technical trust imposed before and without reference to the wrongdoing that caused the debt. Therefore, all references in the Pretrial Stipulation to issues arising under § 523(a)(4) have been removed.

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Defendant's Objections to Plaintiffs' Exhibits

The Proposed Pretrial Order states that Defendant objects to the admissibility of certain of Plaintiffs' exhibits. Defendant has not filed a Motion *in Limine* asserting these objections. The Scheduling Order provides in relevant part:

When preparing the Pretrial Stipulation, all parties shall stipulated to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

Pretrial Order at ¶(1)(h).

Defendant's ability to object to any of Plaintiffs' exhibits has been waived by his failure to comply with the Pretrial Order.

Defendant's Exhibit List

Defendant's descriptions of her exhibits do not sufficiently disclose those exhibits to Plaintiffs. Defendant has disclosed exhibits to Plaintiffs using cryptic filenames such as "file4(1).jpeg" and "file1-1.png." The Exhibit List that Defendant furnished to Plaintiffs for inclusion in the Pretrial Order includes descriptions of the exhibits but no filenames. The Court finds that Plaintiffs have no way of correlating the documents Defendant has disclosed by e-mail with the exhibit descriptions in the Pretrial Order.

To remedy this issue, Defendant shall provide Plaintiffs a CD-ROM containing all the exhibits previously disclosed. The file names of the exhibits shall correspond to the descriptions set forth in the Pretrial Order. Defendant shall cause the CD-ROM to be delivered to Plaintiffs by no later than **February 23, 2019**.

Plaintiffs' Alleged Damages

Although it is impossible to prejudge the outcome of trial, the Court finds it appropriate to emphasize that Plaintiffs face serious difficulties in establishing that they are entitled to the damages alleged. The Complaint alleges that Plaintiffs invested \$4,999 in Redwood on December 7, 2016. The Complaint further alleges that

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Plaintiffs loaned Defendant \$10,000 on December 20, 2016, and loaned Defendant an additional \$3,900 on May 2, 2017. The sum of Plaintiffs' investment and loans to Defendant was \$18,899.

The Complaint does not allege the date upon which the Restaurant closed. A declaration filed by Defendant supporting her Opposition to Plaintiffs' *Motion for an Order Vacating Debtor's Discharge* states that the Restaurant closed in October 2017.

Plaintiffs argue that they are entitled to damages of \$160,000 in connection with Defendant's alleged wrongful retention of the Restaurant Equipment, damages of \$80,000 in connection with Defendant's alleged wrongful failure to transfer the Liquor License to Redwood, and damages in excess of \$4,000 in connection with Defendant's alleged wrongful retention of the Sales Equipment. The Court finds it difficult to see how Plaintiffs could plausibly be entitled to damages in excess of \$240,000 based on a capital contribution of \$4,999 and loans of \$13,900. It appears to the Court that the alleged damages are inflated.

The Court acknowledges that the parties previously attended mediation before Howard Ehrenberg, and that the action did not settle. Nonetheless, in the Court's view, a settlement of this action would inure to the benefit of all parties. The Court's rulings on the parties' pretrial motions should facilitate settlement.

The Court will try this action on **Monday, April 8 and Wednesday April 10, 2019 at 9:00 a.m.** In the event the action does not settle, the parties shall submit the materials set forth in the *Order Re: Courtroom Procedures* [Doc. No. 4] by no later than **Thursday, March 28, 2019**.

III. Conclusion

Based upon the foregoing, the two *Motions In Limine*, the *Motion to Revoke Discharge*, and the *Motion Regarding the Sufficiency of an Answer or Objection* are DENIED.

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

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Note 1

Plaintiffs and Defendant repeat many of the arguments that were made in connection with Plaintiffs' motion to exclude the documents attached to Defendant's December 2018 e-mail. Only new arguments are summarized herein.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Adv#: 2:18-01103 Torices et al v. Uzeta

#104.10 HearingRE: [41] Motion re Sufficiency of Answer or Objection to Request for Admissions - FRCP 36(a)(6) (Urick, Nick)

Docket 41

Tentative Ruling:

2/11/2019

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Adv#: 2:18-01103 Torices et al v. Uzeta

#104.20 Hearing
RE: [29] Motion in Limine re 12/31/18 emails (Urick, Nick)

Docket 29

Tentative Ruling:

2/11/2019

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#104.30 Hearing
RE: [39] Motion to Vacate Discharge

Docket 39

Tentative Ruling:

2/11/2019

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#104.40 HearingRE: [23] Motion in Limine to Debtor's 1/13/19 email (Urick, Nick) WARNING: See entry [25] for corrective action. Attorney to lodge order via LOU. Modified on 1/22/2019 (Lomeli, Lydia R.).

Docket 23

Tentative Ruling:

2/11/2019

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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

Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:18-11170 Min Young Kim

Chapter 7

Adv#: 2:18-01132 Daimler Trust v. Kim

#105.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01132. Complaint by Daimler Trust against Min Young Kim. false pretenses, false representation, actual fraud)) (Mroczynski, Randall)

Docket 1

***** VACATED *** REASON: DISMISSED 9-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Min Young Kim

Represented By
Kelly K Chang

Defendant(s):

Min Young Kim

Pro Se

Plaintiff(s):

Daimler Trust

Represented By
Randall P Mroczynski

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 11-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01095 Official Committee of Unsecured Creditors of Garde v. Blue Cross Blue

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01095. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Blue Cross Blue Shield of Michigan, Inc.. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

***** VACATED *** REASON: DISMISSED 2-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Blue Cross Blue Shield of Michigan,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

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Hearing Room 1568

11:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#108.00 Post Confirmation status conference re [103]
fr. 10-17-18

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-13-18

Tentative Ruling:

10/16/2018

Amended Tentative Ruling. This vacates the prior tentative ruling posted at 10/16/2018 at 1:07:06 PM.

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Reorganized Debtor's Post-Confirmation Status Report [Doc. No. 117], the Court CONTINUES the status conference to February 12, 2019 at 11:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

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

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
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Tuesday, February 12, 2019

Hearing Room 1568

11:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

Adv#: 2:18-01091 Beach Dans, Inc. v. United Community Bank et al

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01091. Complaint by Beach Dans, Inc. against United Community Bank. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)) (Goe, Robert)

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

United Community Bank

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Stephen Reider

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Hearing Room 1568

10:00 AM

2:10-57160 Donald Augustin Torres

Chapter 7

Adv#: 2:11-01462 TruGrocer Federal Credit Union fka Albertsons Empl v. Torres et al

#1.00 HearingRE: [21] Application for and Renewal of Judgment; filed by A. Lysa Simon, Attorney for Judgment Creditor (Milano, Sonny)

Docket 21

Tentative Ruling:

2/12/2019

For the reasons set forth below, Mr. Torres's Opposition is OVERRULED. The Application for Renewed Judgment is valid as of the date of filing.

Pleadings Filed and Reviewed

1. Stipulation for Entry of Judgment [Doc. No. 9] (the "Stipulation")
2. a Judgment (Based on Stipulation for Judgment) [Doc. No. 11] (the "Judgment")
3. Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest [Doc. No. 18] (the "2016 Notice")
4. Declaration of Ann Cargile Regarding Default of Stipulation for Judgment in Support of Termination of Stay of Execution [Doc. No. 19] (the "Cargile Decl").
5. 2nd Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest [Doc. No. 20] (the "2018 Notice")
6. Application for Renewal of Judgment [Doc. No. 21]
7. Notice of Renewal of Judgment [Doc. No. 22]
8. Proof of Service of Notice of Renewal of Judgment and Re-Service of the Declaration Regarding Default of Stipulation Previously Served and Filed on October 5, 2016 [Doc. No. 23]
9. Declaration of Donald Torres in Opposition to Notice of Renewal [Doc. No. 27] (the "Opposition")
10. Reply to Declaration of Donald Torres in Opposition to Notice of Renewal [Doc. No. 28] (the "Reply")

I. Facts and Summary of Pleadings

Donald Augustin Torres ("Mr. Torres") and Nohemi Torres ("Mrs. Torres" and

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together with Mr. Torres, the "Debtors") filed a voluntary chapter 7 petition on November 2, 2010 (the "Petition Date").

On February 4, 2011, TruGrocer Federal Credit Union fka Albertsons Employee's Federal Credit Union ("TruGrocer") initiated this adversary proceeding against the Debtors by filing a complaint to except a debt from discharge pursuant to § 523 [Doc. No. 1] (the "Complaint"). On July 28, 2011, the Debtors and TruGrocer (together, the "Parties") filed a *Stipulation for Entry of Judgment* [Doc. No. 9] (the "Stipulation"), pursuant to which the Defendants agreed to entry of judgment in favor of TruGrocer, and jointly and severally against them, pursuant to §§ 523(a)(2) and (6) in the total amount of \$40,362.40. The Stipulation further provides that there would be a stay of execution that prohibited TruGrocer from taking any action to levy on the Judgment, other than by recording an abstract of judgment, unless the Debtors failed to make payments in accordance with the repayment terms set forth in the Stipulation.

The relevant payment provisions of the Stipulation provide:

4. The Defendants shall make the following payments on the amounts:

Beginning on October 20, 2011, and continuing on or before the 20th day of each month, the Defendants shall pay the Credit Union the sum of \$300.00 per month, until the sum of \$25,200.00, has been paid to the Credit Union. It is estimated that it will take 84 monthly payments to pay said sum, if there is no default or delay in payments.

5. If the Defendants pay the total sum of \$25,200.00, by remitting the \$300.00 a month minimum payments, without an uncured default, the Credit Union will waive the remaining balance owed under the judgment and will at that time serve on the Defendants at their last known address and file with the Court an Acknowledgment of Satisfaction in full.

10. If any payment is ten (10) days or more late, or any ACH or direct deposit payment is reversed or returned by a payee bank unpaid for any reason, or if the Defendants breach any other condition set forth herein, the Credit Union will cause to be remitted by overnight delivery, i.e.,

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overnight mail, federal express, UPS, etc. to the Defendants, at their last know [sic] address(es), up to three times and three times only, a fifteen (15) day Notice of Default and right to cure. If the default is cured and there is more than two (2) additional subsequent defaults or if a default is not timely cured, this Stipulation for Entry of Judgment Upon Default shall be deemed "IN DEFAULT." In said case, the Credit Union may file a Declaration regarding the default with the Court, without further notice to the Defendants or a hearing. The Declaration shall list all payments, which have been received from or on behalf of the Defendants and give credit therefor.

Stipulation, ¶¶ 4, 5, 10.

On August 1, 2011, the Court entered an order approving the stipulation [Doc. No. 10]. On August 2, 2011, the Court entered a *Judgment (Based on Stipulation for Judgment)* [Doc. No. 11] (the "Judgment").

On September 1, 2016, TruGrocer filed a *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* [Doc. No. 18] (the "2016 Notice"), asserting an outstanding balance under the Judgment of \$24,598.21. The 2016 Notice advised that the Debtors had defaulted under the terms of the Stipulation with respect to the waiver of amounts in excess of \$25,200. *Id.*, ¶¶ 14-17. The 2016 Notice further stated that despite the Debtors' breach, if the Debtors continued to make \$300 monthly payments against the Judgment, TruGrocer would not attempt to garnish the Debtors' wages. *Id.*, ¶ 18. On October 5, 2016, TruGrocer filed the *Declaration of Ann Cargile Regarding Default of Stipulation for Judgment in Support of Termination of Stay of Execution* [Doc. No. 19] (the "Cargile Decl").

On October 5, 2018, TruGrocer filed its *2nd Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* [Doc. No. 20] (the "2018 Notice").

On November 15, 2018, TruGrocer filed an *Application for Renewal of Judgment* [Doc. No. 21], *Notice of Renewal of Judgment* [Doc. No. 22], and a *Proof of Service of Notice of Renewal of Judgment and Re-Service of the Declaration Regarding Default of Stipulation Previously Served and Filed on October 5, 2016* [Doc. No. 23].

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On December 12, 2018, Mr. Torres filed a declaration opposing the Renewal Application [Doc. No. 27] (the "Opposition"). Mr. Torres states that he paid the \$25,200 debt to TruGrocer in full and denies that he was in breach of the Stipulation. Mr. Torres does not dispute that he made three late payments, but contends that he has never received any communications from TruGrocer informing him of any default. Mr. Torres states that he has attempted to obtain a copy of his payment history, but that TruGrocer has not responded. Accordingly, Mr. Torres contends that TruGrocer has no right to a renewed judgment.

On December 26, 2018, TruGrocer filed a *Reply to Declaration of Donald Torres in Opposition to Notice of Renewal* [Doc. No. 28] (the "Reply"). In support of the Reply, TruGrocer states that the Debtors made the first two payments under the terms of the Stipulation, but that the Debtors' December 16, 2011 check (number 1235) was returned for insufficient funds. TruGrocer states that on December 21, 2011, it sent a letter to the Debtors via overnight mail (the "December 21 Letter") advising them of the default and giving them notice of their obligation to cure the default within fifteen days, or by January 5, 2012. Cargile Declaration, Ex. A-3. TruGrocer then sent a follow up letter on January 10, 2012 (the "January 10 Letter") advising the Debtors that they failed to timely cure the default and that the waiver was null and void. Cargile Declaration, Ex. A-4. TruGrocer acknowledges that the Debtors sent a check dated January 3, 2012 (number 1207), but states that it was returned for insufficient funds. Accordingly, TruGrocer maintains its position that the Debtors defaulted under the terms of the Stipulation and, as a result, are obligated to pay the full amount due and owing under the Judgment. TruGrocer also highlights that the Debtors failed to timely object to the 2016 Notice.

TruGrocer states that the Judgment does not expire on its face until 10 years from the date it was entered, which is August 2, 2021. However, TruGrocer seeks a renewal to reflect the amounts credited based upon the Debtors' payments to date. Therefore, TruGrocer requests that the Court overrule the Opposition.

II. Findings of Fact and Conclusions of Law

California Code of Civil Procedure section 683.020 defines the period for enforceability of judgments. *See* Cal. Code Civ. Proc. § 683.020. There are certain ways to preserve a judgment, however. One way is to file an application for renewal

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of the judgment under the terms of California Code of Civil Procedure sections 683.120 and 683.130 prior to the expiration of the 10-year enforceability period. *See* Cal. Code. Civ. Proc. §§ 683.120, 683.130. This automatically renews the judgment for another period of ten years. *See* Cal. Code Civ. Proc. § 683.120(b) ("the filing of the application renews the judgment in the amount determined under Section 684.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed").

"[A] request for the renewal of a judgment is not one for independent relief; rather it is 'an automatic, ministerial act accomplished by the clerk of the court.'" *In re Zavala*, 505 B.R. 268 (C.D. Cal. 2014) (quoting *Goldman v. Simpson*, 160 Cal.App.4th 255, 262 (2008)). "Renewal does not create a new judgment or modify the present judgment." *Id.* (quoting *Jonathan Neil & Assocs., Inc. v. Jones*, 138 Cal.App.4th 1481, 1489 (2006)). As explained in *Jonathan Neil & Assocs., Inc. v. Jones*:

There is simply 'the judgment,' which remains enforceable for an additional period and for which interest is calculated differently after a party renews the judgment, but the rights of the judgment creditor arise from the underlying judgment. If, for example, a judgment creditor 'renewed' a judgment that had been previously satisfied, the creditor would not have any additional rights as a result of the renewal.

138 Cal.App.4th at 1487.

In this case, Mr. Torres disputes TruGrocer's entitlement to a renewed judgment but, aside from challenging the amount of the renewed judgment, has not provided any factual or legal basis to conclude that TruGrocer's Application for a Renewed Judgment is invalid.

With respect to Mr. Torres' contention that the Judgment has been fully satisfied, TruGrocer has responded with evidence that supports its position – i.e., that the Debtors defaulted under the terms of the Stipulation by failing to timely make and cure the December 2011 payment and by failing to timely cure the default within fifteen days, by January 5, 2012. The January 10 Letter unambiguously advises the Debtors of their default:

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It is with disappointment that I am sending this letter to you. I have just been informed by TruGrocer Federal Credit Union that you **failed to timely cure** the default of the Stipulation for Entry of Judgment . . .

This is also notwithstanding the fact that Mr. Torres was already aware of the fact that the check had been returned to the Credit Union, when he called my office on December 22, 2011 (i.e., the date my letter was delivered to you) to inform me that he was mailing a new check the same day . . .

It is my understanding that Mr. Torres mailed to the Credit Union a new check dated January 3, 2012 by regular mail on January 4, 2012, in the amount of \$300.00. Unfortunately, it was received by the Credit Union on January 9, 2012 . . .

. . . As such, the waiver of the \$15,000 in the Stipulation for Entry of Judgment is now null and void . . .

If you continue to make your payments on or before the date your payments are due . . . the Credit Union is prepared to forego its right at this time to garnish your wages.

Ex. A-3 (emphasis in original).

Mr. Torres has not submitted any evidence to controvert TruGrocer's evidence. Moreover, Mr. Torres contends that he never received any warnings or communications from TruGrocer regarding any alleged default, but the address listed on Mr. Torres's Opposition is the same address appearing on the December 21 Letter, the January 10 Letter, and the proof of service filed in support of the 2016 Notice. Accordingly, Mr. Torres' Opposition is overruled.

III. Conclusion

For the reasons set forth above, the Court **OVERRULES** Mr. Torres' Opposition. The Application for Renewed Judgment is valid as of November 15, 2018.

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CONT... **Donald Augustin Torres**

Chapter 7

TruGrocer is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Donald Augustin Torres

Represented By
Omar Zambrano

Defendant(s):

Donald Augustin Torres

Represented By
Omar Zambrano

Nohemi Torres

Represented By
Omar Zambrano

Joint Debtor(s):

Nohemi Torres

Represented By
Omar Zambrano

Plaintiff(s):

TruGrocer Federal Credit Union fka

Represented By
A. Lysa Simon

Trustee(s):

David L Hahn (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 13, 2019

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01273 Menchaca Chapter 7 Trustee v. Olivares et al

#2.00 HearingRE: [25] Motion for Default Judgment with proof of service (this motion supersedes withdrawn pleading # 22) (Avery, Wesley)

Docket 25

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Default Judgment Motion is GRANTED IN-PART and DENIED IN-PART.

Pleadings Filed and Reviewed

1. Trustee's Amended Complaint for: (1/6) Avoidance of Transfer; (7) Recovery of Avoided Transfer; (8) Determination of Value, Priority, Extent and Validity of Lien; (9) Declaratory Relief; (10) Quiet Title; (11) to Remove Cloud on Title; and (12) Injunction [Adv. Doc. No. 3] (the "Amended Complaint")
2. Notice of Motion and Motion for Default Judgment; Request for Judicial Notice; Memorandum of Points and Authorities; Declaration in Support Thereof [Adv. Doc. No. 25] (the "Default Judgment Motion")
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Felix Anibal Diaz and Ceclia Giron Diaz (the "Debtors") filed a voluntary joint chapter 7 case on July 6, 2018 (the "Petition Date"). Shortly thereafter John J. Menchaca was appointed chapter 7 trustee (the "Trustee") and continues to serve in that capacity.

On August 28, 2018, the Trustee commenced this action by filing a complaint against Johanna Olivares (the "Defendant"). On September 5, 2018, the Trustee filed an amended complaint asserting claims for: Avoidance of Transfer; Recovery of Avoided Transfer; Determination of Value, Priority and Extent of Validity of Lien; Declaratory Relief; Quiet Title; To Remove Cloud on Title; and Injunction [Adv. Doc.

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No. 3] (the "Amended Complaint").

The Amended Complaint alleges that on October 12, 2017, the Debtors executed a second deed of trust (the "2nd DOT") securing debt in the amount of \$325,000 against their real property located at 11119 S. Doty Avenue, Inglewood, CA 90303 APN 4033-015-024 (the "Duplex") in favor of their daughter, the Defendant, for no consideration (the "Transfer"). The Amended Complaint further alleges that the Transfer is voidable as a fraudulent and preferential transfer.

The deadline for Defendant to file an answer or response to the Amended Complaint expired on October 5, 2018. Defendant did not timely file an answer and, as of the preparation of this tentative ruling, has not filed an answer. The Clerk of the Court entered Defendant's default on November 8, 2018 [Adv. Doc. No. 14].

The Trustee now seeks entry of default judgment on his first through seventh claims for relief [**Note 1**] against the Defendant to avoid and recover the 2nd DOT, such that the 2nd DOT is assigned to the Estate in the amount of \$324,000 as of the Petition Date without interest.

II. Findings of Fact and Conclusions of Law

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). However, the Court may enter default judgment only if the complaint sets forth allegations showing that Plaintiff is entitled to the relief requested.

The Transfer is Avoided as Constructively Fraudulent Pursuant to § 548(a)(1)(B)

Section 548(a)(1)(B) permits the Trustee to avoid a transfer made within two years of the Petition Date if the Debtors "received less than a reasonably equivalent value in exchange for such transfer" and if the Debtors "w[ere] insolvent on the date that such transfer was made . . . or became insolvent as a result of such transfer."

The Trustee has established that the Debtors made the Transfer to the Defendant in the amount of \$325,000 within two years before the Petition Date. Amended

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Complaint, ¶ 7. The well-pleaded allegations of the Amended Complaint establish that the Debtors made the Transfer for no consideration and that the Debtors were insolvent on the date of the Transfer or became insolvent as a result of the Transfer. *Id.*, ¶¶ 7, 10, 16, 22, 23. The Amended Complaint further alleges that the Duplex made up all or substantially all of the Debtors' non-exempt assets. *Id.*, ¶ 14. Accordingly, the Trustee is entitled to a judgment avoiding the Transfer pursuant to § 548(a)(1)(B)(i) and (ii)(I).

The Transfer is Avoided as Actually Fraudulent Pursuant to § 548(a)(1)(A)

Section 548(a)(1)(A) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer ... with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made ... indebted."

Because "it is often impracticable, on direct evidence, to demonstrate an actual intent to hinder, delay or defraud creditors," courts "frequently infer fraudulent intent from the circumstances surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 805 (9th Cir. 1994). Those badges of fraud include "(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer." *Id.*

The Trustee has established that the Debtors made the Transfer to the Defendant in the amount of \$325,000 within the two years before the Petition Date. Amended Complaint, ¶ 7. The well-pleaded allegations of the Amended Complaint establish that the Debtors made the Transfer to their daughter for no consideration shortly after being sued by Deutsche Bank National Trust Company ("Deutsche Bank") for breach of contract in the amount of \$153,873.76 on a \$320,00 promissory note. *Id.*, ¶¶ 7, 17. The Amended Complaint further alleges that the Debtors retained possession of the Duplex after the Transfer. *Id.*, ¶ 14. Accordingly, the Trustee is entitled to a

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judgment avoiding the Transfer pursuant to § 548(a)(1)(A).

The Transfer is Avoided as Actually Fraudulent Pursuant to § 544(b), Applying California Civil Code § 3439.04

Section 544(b)(1) permits the trustee to "avoid any transfer of an interest of the debtor in property ... that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." The "applicable law" in this case is California's Uniform Voidable Transfers Act, codified at California Civil Code § 3439.01 et seq. The relevant provision of the California Uniform Voidable Transfers Act (the "UVTA"), §3439.04, is substantially identical to §548(a)(1)(A) of the Bankruptcy Code.

For the same reasons that the Transfer is avoidable under § 548(a)(1)(A), the Transfer is avoidable as actually fraudulent pursuant to § 544(b), applying California Civil Code § 3439.04.

The Transfer is Avoided as Constructively Fraudulent Pursuant to § 544(b), Applying California Civil Code § 3439.05

As discussed above, the Trustee may avoid transfers pursuant to California's UVTA. The relevant provision of the UVTA, § 3439.05, is substantially identical to § 548(a)(1)(B)(i)(I) of the Bankruptcy Code. Accordingly, the Transfer is avoidable as constructively fraudulent pursuant to § 544(b), applying California Code § 3439.05.

The Trustee's Request for Entry of Default Judgment Pursuant to § 547(b) is Denied

The Trustee seeks entry of default judgment on his § 547(b) preference claim. However, the Court finds that judgment on the preference claim would be inconsistent with the Court's findings that the Transfer was actually and constructively fraudulent as to creditors based, in part, upon the Trustee's allegations that the Transfer was for no consideration. Aside from parroting the elements set forth in section 547(b), the Amended Complaint does not contain sufficiently well-pleaded allegations to establish the Trustee's entitlement to entry of judgment pursuant to § 547(b).

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The Trustee's Request for Entry of Default Judgment Pursuant to § 544(a)(3) is Denied

Under § 544(a)(3), the trustee has the rights and powers of a bona fide purchaser of real property, including the power to avoid transfers of interest in real property. The Amended Complaint alleges several defects that render the 2nd DOT unenforceable against the Trustee as a bona fide purchaser. However, the Trustee has failed to cite any applicable California authority establishing that the purported defects render the 2nd DOT unenforceable. Therefore, the Trustee has failed to carry his burden of establishing entitlement to default judgment pursuant to § 544(b)(3).

The Transfer is Recovered Pursuant to §§ 550 and 551

Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to recover an avoided transfer from the transferee. Accordingly, the Trustee is entitled to a judgment avoiding the 2nd DOT and recovering and assigning the 2nd DOT to the estate.

Pursuant to § 551, "any transfer avoided under section ... 544 ... is preserved for the benefit of the estate but only with respect to property of the estate." Accordingly, the Trustee is entitled to a judgment against the Defendant preserving the avoided Transfer for the benefit of the estate.

III. Conclusion

For the reasons set forth above, the Default Judgment Motion is GRANTED IN-PART and DENIED IN-PART. The Trustee is entitled to judgment pursuant to §§ 544(b), 548(a)(1)(A), 548(a)(1)(B)(i)(I)-(II), 550(a), and 551. The Trustee's request for a judgment on his §§ 547(b) and 544(b)(3) claims is denied.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, and a proposed judgment within seven days of the hearing.

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

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

Note 1: The Trustee states that if the Court enters default judgment on claims 1-7, he will dismiss claims 8-12 as moot.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Johanna Olivares

Pro Se

DOES 1-20

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01274 Menchaca Chapter 7 Trustee v. Diaz et al

#3.00 HearingRE: [23] Motion for Default Judgment with proof of service (Avery, Wesley)

Docket 23

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Default Judgment Motion is GRANTED IN-PART and DENIED IN-PART.

Pleadings Filed and Reviewed

1. Amended Complaint for: (1/4) Denial of Discharge and (5) an Accounting and Turnover [Adv. Doc. No. 2] (the "Amended Complaint")
2. Notice of Motion and Motion for Default Judgment; Request for Judicial Notice; Memorandum of Points and Authorities; Declaration in Support Thereof [Adv. Doc. No. 23] (the "Default Judgment Motion")
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Felix Anibal Diaz and Ceclia Giron Diaz (the "Debtors") filed a voluntary joint chapter 7 case on July 6, 2018 (the "Petition Date"). Shortly thereafter John J. Menchaca was appointed chapter 7 trustee (the "Trustee") and continues to serve in that capacity.

On August 28, 2018, the Trustee commenced this action by filing a complaint against Felix Anibal Diaz and Cecilia Giron Diaz (together, the "Debtors"). On September 5, 2018, the Trustee filed an amended complaint asserting claims for denial of discharge, accounting and turnover [Adv. Doc. No. 2] (the "Amended Complaint").

The Amended Complaint alleges that on October 12, 2017, the Debtors executed a second deed of trust (the "2nd DOT") securing debt in the amount of \$325,000 against their real property located at 11119 S. Doty Avenue, Inglewood, CA 90303 APN

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4033-015-024 (the "Duplex") in favor of their daughter, Johanna Olivares ("Ms. Olivares"), for no consideration (the "Transfer"). The Amended Complaint further alleges that the Debtors lied about the Transfer at the initial 341(a) Meeting of Creditors, failed to disclose the Transfer in their Statement of Financial Affairs ("SOFA"), and made other materially false statements under oath and in their schedules with respect to the Transfer. The Amended Complaint further alleges that the Debtors have failed to account for rental income derived from their post-petition lease of the Duplex.

The deadline for the Debtors to file an answer or response to the Amended Complaint expired on October 5, 2018. The Debtors did not timely file an answer and, as of the preparation of this tentative ruling, have not filed an answer. The Clerk of the Court entered Debtors' default on November 7, 2018 [Adv. Doc. No. 13, 14].

The Trustee now seeks entry of default judgment against the Debtors on all claims for relief.

II. Findings of Fact and Conclusions of Law

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). However, the Court may enter default judgment only if the complaint sets forth allegations showing that Plaintiff is entitled to the relief requested.

The Debtors' Discharge is Denied Pursuant to § 727(a)(2)(A) and (B)

Section 727(a)(2)(A) and (B) provide that a debtor is not entitled to a discharge if:

The debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate . . . has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred removed, destroyed, mutilated, or concealed—

(A) property of the debtor within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition.

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Here, the well-pleaded allegations in the Amended Complaint establish that within one year of the Petition Date, on October 12, 2017, the Debtors transferred the Duplex to Ms. Olivares for no consideration. Amended Complaint, ¶ 7. The Amended Complaint further alleges that shortly before the Transfer occurred, the Debtors were sued by Deutsche Bank National Trust Company ("Deutsche Bank") for a breach of contract in the amount of \$153,873.76 on a \$320,000 promissory note. *Id.*, ¶ 17. Finally, the Amended Complaint alleges that the Debtors made the Transfer with the intent to hinder, delay, or defraud creditors, including but not limited to, Deutsche Bank. *Id.*, ¶ 20. Therefore, the Court finds that the Debtors are not entitled to a discharge pursuant to § 727(a)(2)(A).

The Amended Complaint further alleges that the Debtors concealed the Transfer on their SOFA and falsely scheduled a debt owing to Ms. Olivares in the amount of \$324,000 on Schedule D to mislead the Trustee and conceal the existence of equity in the Duplex. Amended Complaint, ¶¶ 12a, 12b, 21. Therefore, the Court finds that the Debtors are not entitled to a discharge pursuant to § 727(a)(2)(B).

The Trustee's Request for Entry of Default Judgment Pursuant to § 727(a)(3) is Denied

Section 727(a)(3) provides that a debtor is not entitled to a discharge if:
The debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure was justified under all of the circumstances of the case.

The Trustee seeks entry of default judgment on his § 727(a)(3) claim on the basis that the Debtors have failed to present any evidence to support their assertion that the 2nd DOT was given for consideration. However, the Court finds that judgment on this claim would be inconsistent with the Court's above findings that the Debtors transferred the Duplex for no consideration with an intent to hinder, delay, or defraud creditors and that Debtors concealed and mislead the Trustee with respect to the Transfer. Either the Debtors fabricated the debt to conceal and protect their equity (making them liable under § 727(a)(2)) or they incurred the debt but concealed, destroyed, mutilated, falsified or failed to keep records of the debt (making them

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liable under § 727(a)(3)). On these facts, the Trustee has failed to adequately demonstrate his entitlement to judgment under both §§ 727(a)(2) and (a)(3). Therefore, the Trustee's request for judgment pursuant to § 727(a)(3) is denied.

The Debtors' Discharge is Denied Pursuant to § 727(a)(4)(A)

Section 727(a)(4)(A) provides that a debtor is not entitled to a discharge if "the debtor knowingly and fraudulently, in or in connection with the case made a false oath or account."

The Amended Complaint alleges that the Debtors lied about their relationship to Ms. Olivares, failed to disclose the Transfer on their SOFA, and falsely scheduled a debt owing to Ms. Olivares in the amount of \$324,000 on Schedule D to mislead the Trustee and conceal the existence of equity in the Duplex. Amended Complaint, ¶¶ 9, 12a, 12b, 27. Therefore, the Court finds that the Debtors are not entitled to a discharge pursuant to § 727(a)(4)(A).

The Trustee's Request for Entry of Default Judgment Pursuant to § 727(a)(4)(D) is Denied

Section 727(a)(4)(D) provides that a debtor is not entitled to a discharge if: the debtor knowingly and fraudulently, in or in connection with the case withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

The Trustee seeks entry of judgment pursuant to § 727(a)(4)(D) on the basis that the Debtors have failed to present any evidence to support their assertion that the 2nd DOT was given for consideration. For the same reasons stated above with respect to § 727(a)(3), the Court finds that judgment on this claim would be inconsistent with the Court's other findings with respect to § 727(a)(2).

The Debtors' Discharge is Denied Pursuant to § 727(a)(5)

Section 727(a)(5) provides that a debtor is not entitled to a discharge if:

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The debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities.

Here, the Debtors have failed to satisfactorily explain the consideration received for the Transfer, which resulted in a loss of equity in the Duplex. Amended Complaint, ¶¶ 7, 14, 15, 16 31. Therefore, the Court finds that the Debtors are not entitled to a discharge pursuant to § 727(a)(5).

The Trustee is Entitled to an Accounting and Turnover of the Rents

Section 542(a) provides:

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

Here, the Amended Complaint alleges that the Duplex had a fair market value of \$675,000 as of the Petition Date and that absent the 2nd DOT, the Duplex has equity that the Trustee could administer for the benefit of creditors. Amended Complaint, ¶¶ 5, 34, 35. [Note 1] Therefore, the Trustee is entitled to judgment pursuant to § 542(a) requiring the Debtors to turn over the Duplex to the Trustee.

The Amended Complaint also alleges that the Debtors' Schedule I states that the Debtors receive \$1,250 for the lease of the Duplex and their 2017 tax return reflected monthly income of \$1,300 from the lease of the Duplex. Amended Complaint, ¶ 15. The Amended Complaint further alleges that that the Debtors have not turned over or accounted for any rents received post-petition arising from the Debtors' lease of the Duplex. *Id.*, ¶¶ 34, 35. Therefore, the Trustee is entitled to judgment pursuant to §§ 542(a) and 105(a) requiring the Debtors to provide an accounting of any post-petition rent.

III. Conclusion

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For the reasons set forth above, the Default Judgment Motion is GRANTED IN-PART and DENIED IN-PART. The Trustee is entitled to judgment denying the Debtors' discharge pursuant to §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(4)(A), and 727(a)(5), for turnover of the Duplex pursuant to § 542(a), and for an accounting of any post-petition rent pursuant to §§ 542(a) and 105. The Trustee's request for a judgment on his §§ 727(a)(3) and 727(a)(4)(D) claims is denied.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, and a proposed judgment within seven days of the hearing.

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

Note 1: The Trustee has concurrently moved for entry of default judgment against Ms. Olivares avoiding and recovering the 2nd DOT for the benefit of the estate. *See* Adv. Case. No. 2:18-ap-01273-ER, Adv. Doc. No. 25.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Felix Anibal Diaz

Pro Se

Cecilia Giron Diaz

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

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Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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2:12-50423 Deborah Earle

Chapter 11

#4.00 Status Hearing re post confirmation status conference

fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17; 3-13-18' 6-12-18; 9-12-18;
12-12-18

Docket 0

Tentative Ruling:

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No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor and Debtor-In-Possession's Post Confirmation Report on Status of Reorganization and Declaration of Deborah Earle in Support Thereof [Doc. No. 445], the Court CONTINUES the status conference to April 17, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

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

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

#5.00 Hearing
RE: [893] Motion to Consolidate Lead Case 2:16-bk-13575 with 2:16-bk-19233

Docket 893

Tentative Ruling:

2/12/2019

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

Pleadings Filed and Reviewed:

- 1) Papers filed in Liberty Asset Management Corporation:
 - a) Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 893]
 - i) Memorandum of Points and Authorities in Support of Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 894]
 - ii) Notice of Motion [Doc. No. 895]
 - b) Opposition to Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 899]
 - c) Reply Brief in Support of Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 901]
- 2) Substantially identical papers filed in Oak River Asset Management:
 - a) Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 179]
 - i) Memorandum of Points and Authorities in Support of Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 180]
 - ii) Notice of Motion [Doc. No. 181]
 - b) Opposition to Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 182]
 - c) Reply Brief in Support of Motion for Order Substantively Consolidating Bankruptcy Cases [Doc. No. 183]

I. Facts and Summary of Pleadings

Liberty Asset Management Corporation ("Liberty") commenced a voluntary

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Chapter 11 petition on March 21, 2016. Oak River Asset Management LLC ("Oak River") commenced a voluntary Chapter 11 petition on July 12, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over Liberty and Oak River's cases. On January 30, 2017, both cases were reassigned to the undersigned Judge.

On June 18, 2018, the Court entered an order in the Liberty case confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Liberty Plan" and the order confirming the Liberty Plan, the "Liberty Confirmation Order"). Liberty Doc. No. 609, Ex. A (Liberty Plan) and Liberty Doc. No. 665 (Liberty Confirmation Order). The Liberty Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of Liberty's estate. Among other things, the Liberty Plan provides that Liberty holds 100% of Oak River's equity. Consequently, the Liberty Plan provides that any surplus proceeds from Oak River's estate will be distributed to creditors of Liberty's estate.

AHA 2012 LLC ("AHA"), YCJS 2012 LLC ("YCJS"), and Frank Lee, as Trustee of the Lee Living Trust Dated 6/23/1987, and Christopher Lee (the "Lee Investors") (collectively, the "Claimants") filed identical Proofs of Claim (the "Claims") against the Liberty and Oak River estates. On January 7, 2019, the Court overruled in part the Plan Administrator's objections to the Claims, finding that the Claimants held allowed general unsecured claims against Oak River's estate in the following amounts:

- 1) AHA—\$720,000;
- 2) YCJS—\$900,000; and
- 3) Lee Investors—\$900,000.

Memorandum of Decision Denying Objections to Proofs of Claim [Doc. No. 876] (the "Memorandum").

The Court further found that to the extent Oak River's estate did not contain sufficient funds to pay the Claims in full, the Claimants held allowed general unsecured claims for the remaining unpaid amounts against Liberty's estate.

Findings made in the Memorandum are set forth at length, as they provide necessary context for the Plan Administrator's instant motion seeking substantive consolidation of the estates of Liberty and Oak River. As explained in the Memorandum (footnotes omitted):

The claims arise from Claimants' attempt to invest in real property located at

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119 Furlong Lane, Bradbury, CA 911008 (the "Furlong Property"). Pursuant to this objective, each claimant executed a contract titled *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Property Agreement* (the "Purchase and Sale Agreement"). The contracts were substantially identical. Each Purchase and Sale Agreement was entered into between the Claimant, on the one hand, and "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates," on the other hand. The Purchase and Sale Agreements required Liberty and/or its subsidiaries and affiliates to purchase the Furlong Property on the Claimants' behalf, after which each Claimant would receive a fractional interest in the Furlong Property proportionate to the Claimant's investment. The Purchase and Sale Agreements further provided:

The investor acknowledges that LAMC is not the current owner of the real property [the Furlong Property] ... but has the same under purchase contract with its rights as Purchaser thereunder freely assignable to the investor

Each Claimant anticipated that after Liberty purchased the Furlong Property on their behalf, the Furlong Property would quickly be sold for a substantial profit. After several months, Claimants became suspicious as to why the Furlong Property had not been sold. At several times during 2014 and 2015, certain of the Claimants met with Benjamin Kirk and Shelby Ho to discuss the status of the Furlong Property. After these discussions provided fruitless, on January 19, 2016, Claimants commenced litigation against Liberty, Oak River, and other parties in the Los Angeles Superior Court. Claimants asserted causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation, rescission, unfair competition, violation of the Corporate Securities Law of 1968, conversion, conspiracy, and alter ego. Only the causes of action for conspiracy and alter ego were pleaded against Oak River.

Memorandum at 3–4.

The primary issues regarding the allowability of the Claims was whether Claimants were entitled to receive a distribution from Liberty's estate, from Oak River's estate, or from both estates. As noted in the Memorandum:

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Because more claims have been filed against the Liberty estate than the Oak River estate, Claimants' distribution will be significantly larger if it is initially paid from Oak River's estate. Claimants assert that they are entitled to receive a distribution from Oak River's estate, as well as a distribution from Liberty's estate if Oak River's estate does not contain sufficient funds to pay their claims in full. Movants assert that Claimants are entitled to receive a distribution only from Liberty's estate.

Id. at 3.

Determination of this issue was complicated by the fact that the positions taken by various parties with respect to Liberty's ownership interest in Oak River has evolved throughout these cases. As stated in the Memorandum:

Liberty commenced its voluntary Chapter 11 petition on March 21, 2016. Liberty filed a complete set of schedules on April 5, 2016. In the April 5 schedules, Liberty asserted a "20% beneficial interest" in Oak River. On June 7, 2016, Liberty filed amended schedules, in which it asserted a "[p]aternal beneficial interest" in Oak River.

On July 12, 2016, Oak River commenced its voluntary Chapter 11 petition. Oak River's petition was signed by Lawrence Perkins, in his capacity as Oak River's "authorized agent." At the time, Mr. Perkins was serving as Liberty's Chief Restructuring Officer ("CRO"). Oak River's June 12, 2016 schedules provided that its equity was held by the following persons and entities:

- 1) 16% equity interest held by AHA;
- 2) 4% equity interest held by Christopher Deryen Lee;
- 3) 16% equity interest held by the Lee Trust;
- 4) 44% equity interest held by Liberty; and
- 5) 20% equity interest held by YCJS.

On September 27, 2016, the Court granted Oak River's application to employ Mr. Perkins as its CRO, with such employment effective as of July 12, 2016. On January 25, 2018, Oak River filed a *List of Equity Security Holders—Amended*, which provided that Liberty held 100% of Oak River's equity. The *List of Equity Security Holders—Amended* was signed by Mr.

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Perkins in his capacity as Oak River's CRO.

On June 18, 2018, the Court confirmed the Liberty Plan, which provides that Oak River is an "Investment Entity" of Liberty. The Liberty Plan defines an "Investment Entity" as "a single purpose limited liability entity set up to acquire assets, which was capitalized with funds provided by" Liberty. The Liberty Plan and Liberty Plan Confirmation Order contain no express findings regarding Liberty's ownership of Oak River. However, the Liberty Plan provides for the distribution of Oak River's equity to Liberty's estate, a distribution which would be impermissible unless Liberty owned 100% of Oak River's equity. Consequently, implicit in the Liberty Confirmation Order is a finding that Liberty owns 100% of Oak River's equity.

At the hearing [on the Plan Administrator's objections to the Claims], the Plan Administrator stated that Liberty's 100% ownership interest in Oak River had been established by findings made by Judge Donovan in the adversary proceeding *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk* (the "Kirk/Gao Adversary Proceeding"). To ensure a clear record, the Court finds it necessary to provide clarification with respect to this statement. On January 25, 2017, Judge Donovan entered findings of fact (the "Jan. 25 Findings"), which provided, among other things, that Liberty made use of various Investment Entities in the operation of its business, and that "all of the property held by the Investment Entities is actually owned by" Liberty. The Jan. 25 Findings did not, however, specifically designate Oak River as such an Investment Entity, although the definition of "Investment Entity" was non-exclusive.

Memorandum at 8–9.

The Court found that the difficulties faced by Mr. Perkins and other interested parties in understanding Liberty's ownership interested in Oak River were caused by the malfeasance of Ms. Gao:

As found in the Kirk/Gao Adversary Proceeding, Ms. Gao was a manager at Liberty who was responsible for overseeing its accounting and record-keeping functions. After an investigator hired by the Official Committee of Unsecured Creditors appointed in Liberty's case (the "Liberty Committee") observed a document shredding truck at Liberty's offices, the Liberty Committee filed an emergency motion to force Liberty to turnover

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documents and information in its possession. By the time the Liberty Committee obtained an order granting its turnover motion, many of Liberty's documents had already been consigned to the shredder. Ms. Gao supervised the document shredding.

Liberty's books and records that were not destroyed were ultimately turned over to Mr. Perkins and the Liberty Committee. The remaining books and records were insufficient to permit the compilation of "even a rudimentary overview of [Liberty's] financial operations." Even attempts by the Liberty Committee to obtain records from third parties did not produce "a coherent or consistent set of underlying records on which [Liberty] based its business."

Certain public filings pertaining to Oak River remain available. The *Limited Liability Company Articles of Organization* (the "Articles of Organization") for Oak River's predecessor-in-interest, JPM 6 Unity Project LLC ("JPM 6"), were filed with the California Secretary of State (the "Secretary of State") on April 30, 2010. The Articles of Organization specified that JPM 6 would be managed by more than one manager. On August 13, 2010, Mr. Kirk filed a *Limited Liability Company Certificate of Amendment* (the "Certificate of Amendment") with the Secretary of State, changing the name of JPM 6 to Oak River Asset Management LLC. The Certificate of Amendment stated that Oak River would be managed by one manager, and designated that manager as Mr. Kirk.

On April 25, 2014, Oak River filed a *Statement of Information* with the California Secretary of State, which stated that Hanna Cosman was the manager of Oak River. As the Court found in the Kirk/Gao Adversary Proceeding, Hanna Cosman (aka Helena Hanna Cosman) had signature authority to transfer Liberty funds with respect to certain bank accounts. On March 12, 2015, Oak River filed an additional *Statement of Information* with the California Secretary of State, which stated that Mr. Kirk was the manager of Oak River. On December 7, 2016, Ms. Gao filed a *Certificate of Cancellation* with the California Secretary of State for Oak River, which stated that all the members of Oak River had voted to dissolve the entity.

Memorandum at 9–10.

The court held that Claimants were entitled to a recovery from the estates of both Liberty and Oak River, based on the fact that the Purchase and Sale Agreements giving rise to the Claims were entered into by Claimants, on the one hand, and

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"Liberty Asset Management Corporation *and its respective parent or subsidiary companies and affiliates*," on the other hand. The Court found that at the time the Purchase and Sale Agreements were executed, Oak River was an affiliate of Liberty. Memorandum at 10–12.

Summary of Papers Filed in Connection with the Plan Administrator's Motion to Substantively Consolidate the Estates of Liberty and Oak River

The Plan Administrator moves to substantively consolidate the estates of Liberty and Oak River. The Plan Administrator contends that substantive consolidation is appropriate for the following reasons:

- 1) Substantive consolidation is appropriate if "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit" or if "the affairs to the debtor are so entangled that consolidation will benefit all creditors." *Bonham v. Alexander (In re Bonham)*, 229 F.3d 750, 766 (9th Cir. 2000).
- 2) The Claimants did not rely on the separate identity of Oak River in choosing to invest with Liberty because at the time they made their investment, the Claimants had no knowledge of Oak River.
- 3) The affairs of Liberty and Oak River cannot be disentangled. Any accounting records that may have existed have been destroyed. The Plan Administrator has no information regarding the source of purchase money for the Furlong Property, and has no records of Oak River's intercompany payables or receivables.
- 4) Substantive consolidation is appropriate because there is a complete unity of interest between Liberty and Oak River. Both entities were controlled by Mr. Kirk prior to the filing of the bankruptcy petitions. Claims asserted against both Debtors arise from Liberty's fraudulent investment scheme.

The Claimants oppose substantive consolidation for the following reasons:

- 1) There is no evidence or argument that either Oak River or Claimants received a fraudulent conveyance or preferential payment from Liberty or from entities asserting claims against Liberty.
- 2) Claimants did not deal with Liberty and Oak River as a single economic unit, because Claimants did not extend credit to either entity. Instead, claimants contracted to purchase the Furlong Property.
- 3) The affairs of Liberty and Oak River are not hopelessly entangled. The affairs

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of Oak River are quite simple. The only claims that appear to be left are small tax claims and Claimant's claims. The only remaining asset is cash. All that is left to do is distribute the funds.

The Plan Administrator makes the following arguments in Reply to the Claimants' Opposition:

- 1) The Claimants have not established that they relied on Oak River's separate credit. Declarations filed by the Claimants indicate that at the time they invested, they had no knowledge of Oak River. This necessarily means that the Claimants did not rely on the separate assets of Oak River before extending credit.
- 2) Claimants assert that the estates should not be substantively consolidated because there is no evidence that they received a fraudulent transfer. Claimants mis-state the *Bonham* test. Substantive consolidation does not require the existence of a fraudulent transfer.
- 3) Substantive consolidation will benefit Liberty's investors. If the estates are consolidated, unsecured creditors will receive a recovery of approximately 10–15%. Absent consolidation, the recovery will be between 7–12%.

II. Findings and Conclusions

The Bankruptcy Code contains no provision permitting the substantive consolidation of two bankruptcy estates. "[T]he power of substantive consolidation derives from the bankruptcy court's general equity powers as expressed in § 105 of the Bankruptcy Code." *Bonham v. Alexander (In re Bonham)*, 229 F.3d 750, 764 (9th Cir. 2000). The primary purpose of substantive consolidation "is to ensure the equitable treatment of all creditors." *Bonham*, 229 F.3d at 764. The purpose and effect of substantive consolidation are explained in *Bonham*:

Orders of substantive consolidation combine the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat them as though they belong to a single entity. Substantive consolidation 'enabl[es] a bankruptcy court to disregard separate corporate entities, to pierce their corporate veils in the usual metaphor, in order to reach assets for the satisfaction of debts of a related corporation.' The consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the

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creditors of the consolidated entities are combined for purposes of voting on reorganization plans. Without the check of substantive consolidation, debtors could insulate money through transfers among inter-company shell corporations with impunity.

Bonham, 229 F.3d at 764 (9th Cir. 2000) (internal citations omitted).

The Ninth Circuit has adopted the Second Circuit's test for determining whether substantive consolidation is appropriate. *Id.* at 766. That test requires consideration of two factors: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit ... or (2) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors" *Union Savings Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 518 (2d Cir. 1988). As explained by the Ninth Circuit:

The presence of either factor is a sufficient basis to order substantive consolidation. *See id.* The first factor, reliance on the separate credit of the entity, is based on the consideration that lenders "structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *In re Augie/Restivo*, 860 F.2d at 518–19. Consolidation under the second factor, entanglement of the debtor's affairs, is justified only where "the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors" or where no accurate identification and allocation of assets is possible. *Id.* at 519.

Bonham, 229 F.3d at 766 (9th Cir. 2000).

The Second Circuit case supplying the substantive consolidation standard adopted by the Ninth Circuit provides that the remedy is "to be used sparingly." *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988).

The posture of the Plan Administrator's substantive consolidation motion is unusual. Typically motions seeking to substantively consolidate separate estates are brought prior to the confirmation of a Chapter 11 Plan. *See, e.g., Bonham*, 229 F.3d at 764 (noting that "creditors of the consolidated entities are combined for purposes of voting on reorganization plans"). Here, a Plan has already been confirmed in Liberty's

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case.

None of the cases reviewed by the Court require that estates be substantively consolidated prior to plan confirmation. However, the Plan Administrator's decision to seek substantive consolidation subsequent to confirmation of the Liberty Plan makes it significantly more difficult for the Plan Administrator to establish that either of the *Augie/Restivo* factors have been met.

The Court first addresses the second factor, whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. "Consolidation under the second factor ... is justified only where 'the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors' or where no accurate identification and allocation of assets is possible." *Id.* This factor contemplates that substantive consolidation will be sought prior to the plan confirmation process. It is often invoked in cases involving widespread fraud, in which the costs of hiring forensic accountants to unravel the debtors' falsified books would materially reduce the recoveries to creditors. Because creditors would bear the costs of reconstructing each separate debtors' books, a plan providing for the substantive consolidation of all debtors is proposed, under which creditors recover *pro rata* from the same asset pool. The plans approved in WorldCom, Enron, and Global Crossing substantively consolidated multiple debtor entities.

The fact that the Liberty Plan has already been confirmed severely undercuts the Plan Administrator's argument that substantive consolidation is warranted under the second factor. The Plan Administrator was able to propose a plan distributing assets to creditors without resorting to substantive consolidation. Creditors who voted for the Liberty Plan did not do so with the expectation that they would obtain a larger recovery because Liberty's estate would be substantively consolidated with Oak River's estate.

The Plan Administrator correctly points out that it is impossible to reconstruct Oak River's financial records. In the circumstances of this case, that fact does not support substantive consolidation. As noted by the Claimants, the absence of financial records does not prevent the Plan Administrator from distributing Oak River's assets. Nor has the absence of such records prevented confirmation of the Liberty Plan.

Where the Court is asked to invoke an equitable power such as substantive consolidation, consideration of the context in which the request arises matters. Substantive consolidation is "to be used sparingly." *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988). Here, the Plan Administrator's belated request

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for substantive consolidation appears to be an attempt to avoid the consequences of the Court's decision to allow the Claimants to recover against the estates of Liberty and Oak River. It was certainly the Plan Administrator's prerogative to oppose distribution to the Claimants from Oak River's estate. But when asked to decide whether to invoke sparingly used equitable remedies such as substantive consolidation, it is also the Court's prerogative to closely scrutinize the circumstances in which the requested relief is sought. The case for the exercise of the Court's equitable powers is diminished where, as here, the relief is sought only in response to an adverse ruling and only after confirmation of the Liberty Plan.

The first factor—whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit—implies that the remedy of substantive consolidation will be sought prior to the plan confirmation process. The rationale for this factor is that creditors "do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor company for the borrower's assets." *Bonham*, 229 F.3d at 766. This rationale does not absolutely depend upon substantive consolidation being sought prior to plan confirmation. The factor, however, does suggest that substantive consolidation would be sought prior to confirmation, since the plan confirmation process vindicates creditors' ability to protect their rights.

The Court agrees with the Plan Administrator's argument that, because the Claimants were not aware of Oak River's existence at the time they executed the Purchase and Sale Agreements, the Claimants dealt with Liberty and Oak River as a single economic unit and did not rely upon Oak River's separate identity when extending credit. Thus, at least with respect to these three Claimants, the Plan Administrator has shown that the first factor applies.

That the first factor is met with respect to the Claimants does not mean that the Plan Administrator is entitled to the substantive consolidation of Liberty and Oak River's estate. For the reasons discussed above, the Court does not find this to be an appropriate case to invoke the equitable remedy of substantive consolidation.

Based upon the foregoing, the Motion is DENIED. The Claimants shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

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

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

Party Information

Debtor(s):

Liberty Asset Management

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

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2:16-19233 Oak River Asset Management LLC

Chapter 11

#6.00 Hearing
RE: [179] Motion to Consolidate Lead Case 16-13575 with 16-19233

Docket 179

Tentative Ruling:

2/12/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By
David B Golubchik
Jeffrey S Kwong
Eve H Karasik
Robert Thomas Bryson

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2:18-20151 Verity Health System of California, Inc.

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#7.00 Hearing re [1153] objections filed in connection with the Subsequently Identified Designated Contracts

Docket 0

Tentative Ruling:

2/12/2019

No appearances required on this matter.

This hearing was set in the event that Santa Clara County elected to assume any additional executory contracts and/or unexpired leases (the "Subsequently Identified Contracts"), for the purpose of addressing objections to assumption and/or assignment. No objections in connection with the assumption and assignment of Subsequently Identified Contracts have been asserted. This hearing is VACATED as moot.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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#7.10 Hearing

RE: [1182] Motion Debtors' Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Regional Hospital Upon Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

fr. 1-30-19

Docket 1182

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Debtors' motions to reject collective bargaining agreements with the California Nurses Association and the Service Employee International Union—United Healthcare Workers West are GRANTED. The Court approves the settlements reached between the Debtors and the Engineers and Scientists of California, IFPTE Local 20 and the California Licensed Vocational Nurses Association.

Pleadings Filed and Reviewed:

- 1) Debtors' Motions to Modify, Reject, and/or Terminate Various Collective Bargaining Agreements:
 - a) Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of Engineers and Scientists of California, IFPTE Local 20's Collective Bargaining Agreements with O'Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of the Hospitals to the County of Santa Clara [Doc. No. 1181]
 - i) Supplement to Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of Engineers and Scientists of California, IFPTE Local 20's Collective Bargaining Agreements with O'Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of the Hospitals to the County of Santa Clara [Doc. No. 1373]

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- b) Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of California Licensed Vocational Nurses Association's Collective Bargaining Agreement with O'Connor Hospital Upon the Closing of the Sale of These Hospitals to the County of Santa Clara [Doc. No. 1191]
 - i) Supplement to Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of California Licensed Vocational Nurses Association's Collective Bargaining Agreement with O'Connor Hospital Upon the Closing of the Sale of These Hospitals to the County of Santa Clara [Doc. No. 1372]
- c) Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of Hospitals to the County of Santa Clara [Doc. No. 1182]
- d) Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union—United Healthcare Workers West's Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara [Doc. No. 1192]
- e) Corrected Declaration of Sam J. Alberts in Support of Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1202]
- f) Declaration of Richard G. Adcock in Support of Debtors' § 1113 Motions [Doc. No. 1193]
- g) Declarations of James M. Moloney in Support of Debtors § 1113 Motions [Doc. No. 1194]
- 2) Opposition Papers:
 - a) California Nurses Association Objection to Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Hospital [Doc. No. 1269]
 - i) Declaration of Andrew Prediletto in Support of California Nurses Association's Objection to Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of the California Nurses Association's Collective Bargaining Agreement [Doc. No. 1270]
 - b) SEIU-UHW's Opposition to Debtors' Motion Under § 1113 to Modify, Reject

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and Terminate SEIU-UHW's CBA with Certain Debtors [Doc. No. 1271]

- i) Declaration of Greg Pullman in Opposition to Debtors' Motion Under § 1113 to Modify, Reject and Terminate SEIU-UHW's CBA with Certain Debtors [Doc. No. 1272]
 - ii) Declaration of Emily P. Rich in Opposition to Debtors' Motion Under § 1113 to Modify, Reject and Terminate SEIU-UHW's CBA with Certain Debtors [Doc. No. 1273]
- 3) Official Committee of Unsecured Creditors' Response to Debtors' Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1276]
 - 4) Debtors' Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1332]
 - 5) Sur-Reply to Debtors' Reply to California Nurses Association's Objection to Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreements [Doc. No. 1385]
 - a) Declaration of Kyrsten Skogstad in Support of [Sur-Reply] [Doc. No. 1386]
 - 6) Debtors' Request to Strike Or, in the Alternative, Overrule California Nurses' Association Unauthorized "Sur-Reply" to Debtors' Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1396]
 - 7) Order: (1) Requiring Further Briefing on Debtors' Motions to Reject Collective Bargaining Agreements and (2) Continuing Hearing on Motions from January 30, 2019 to February 8, 2019 at 10:00 a.m. [Doc. No. 1411]
 - a) Order Approving Stipulation Continuing Hearing Regarding Debtors' Motions Under Section 1113 of the Bankruptcy Code [Doc. No. 1446]
 - 8) Additional Briefing Submitted in Response to the Court's Order:
 - a) Debtors' Response to Court Order for Additional Briefing Regarding Selected Issues Concerning Debtors' Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1507]
 - i) Notice of Errata [Doc. No. 1511]
 - b) California Nurses Association's Response to the Hon. Ernest Robles' Order Requesting Further Briefing Regarding Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of CNA's Collective Bargaining Agreements [Doc. No. 1508]
 - c) The County of Santa Clara's Briefing Re Debtors' Motions to Reject Collective Bargaining Agreements [Doc. No. 1502]
 - d) SEIU-UHW's Supplemental Brief in Opposition to Debtors' Motion Under

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§ 1113 to Modify, Reject and Terminate SEIU-UHW's CBA with Certain Debtors [Doc. No. 1501]
e) Official Committee of Unsecured Creditors' Supplemental Response to Debtors' Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1503]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

A. The Bidding Procedures Order and Sale Order

On October 31, 2018, the Court entered an *Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to Be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Doc. No. 724] (the "Bidding Procedures Order," and the motion for entry of the Bidding Procedures Order, the "Bidding Procedures Motion").

The Bidding Procedures Order established procedures governing the auction of Saint Louise Regional Hospital ("St. Louise"), O'Connor Hospital ("O'Connor"), and related assets (collectively, the "Hospitals"). Pursuant to an Asset Purchase Agreement [Doc. No. 365, Ex. A] (the "APA") dated October 1, 2018, the County of Santa Clara ("Santa Clara") was designated as the stalking horse bidder.

The APA provides that certain liabilities are excluded from the sale, including "Labor Obligations," defined as all "collective bargaining agreements ... that are in place with any labor unions ..." APA at ¶8.13. Santa Clara is not obligated to close the sale unless it is "satisfied, in its reasonable discretion, by the terms of the Sale Order or otherwise," that the Hospitals "are being sold and transferred to [Santa Clara] free and clear of any and all Labor Obligations to the maximum extent permitted by law." *Id.*

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Under the APA, Santa Clara has agreed to offer provisional employment to substantially all non-management employees of the Hospitals who are actively employed and in good standing. APA at ¶5.3. Employees who accept provisional employment will be provided the opportunity to apply for permanent-track positions with Santa Clara. *Id.*

Certain of the Debtors are parties to collective bargaining agreements (the "CBAs") with the California Nurses Association (the "CNA"), the Service Employee International Union—United Healthcare Workers West (the "SEIU-UHW"), the Engineers and Scientists of California, IFPTE Local 20 ("Local 20"), and the California Licensed Vocational Nurses Association (the "CLVNA") (collectively, the "Unions").

The Hospitals were vigorously marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain"). Twenty-five parties executed non-disclosure agreements and were granted access to a data room containing information about the Hospitals. Decl. of James M. Moloney [Doc. No. 1041] (the "Moloney Decl.") at ¶6.

Cain sent a direct e-mail communication to over 170 interested potential purchasers containing key information about the Hospitals. *Id.* at ¶7. Cain actively followed up with two serious potential purchasers, assisting those parties with due diligence and making itself available to answer questions. *Id.* at ¶¶7–8. During the marketing process, the Debtors expressed their preference that potential purchasers assume the CBAs. Decl. of Richard G. Adcock in Support of Debtors' § 1113 Motions [Doc. No. 1193] (the "Adcock Decl.") at ¶7. Notwithstanding these thorough marketing efforts, no party other than Santa Clara placed a bid for the Hospitals. Moloney Decl. at ¶9.

On December 27, 2018, the Court entered an *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Doc. No. 1153] (the "Sale Order"). The sale is projected to close on March 4, 2019. Closing of the sale "is conditioned upon the rejection, termination and/or modification of all applicable CBAs related to [O'Connor] and [Saint Louise], pursuant to § 1113 or as otherwise agreed to between the Debtors, the respective unions, and as approved by the Court." Sale Order at ¶18. The Sale Order further provides that the "Debtors must have resolution of the collective bargaining agreements ... that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to [Santa Clara] closing on the proposed Sale pursuant to the APA." *Id.* at ¶33.

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B. The Settlements with Local 20 and CLVNA

On January 2, 2019, the Debtors filed motions seeking authorization to reject, modify, and or terminate the CBAs with the Unions (collectively, the "Rejection Motions"). The Debtors have reached settlements resolving the Rejection Motions with Local 20 and CLVNA. CNA and SEIU-UHW (the "Objecting Unions") continue to oppose the Rejection Motions.

The material terms of the settlement with CLVNA are as follows:

- 1) Rejection and termination of the CLVNA CBA shall be effective upon the closing of the sale.
- 2) All paid time off ("PTO") obligations that have accrued and remain unused or unpaid that arose after the Petition Date are granted allowed administrative expense status under § 503. PTO obligations that accrued between March 4, 2018 and the Petition Date are granted allowed priority status under § 507(a)(4), up to the statutory cap of \$12,850, with any remaining balance to be treated as a general unsecured claim. PTO obligations that accrued prior to March 4, 2018, are granted allowed general unsecured claim status.
- 3) Notwithstanding the rejection and termination of the CLVNA CBA, allowed severance benefits are granted for any employee covered under the CLVNA CBA who is not provisionally hired by Santa Clara.

The material terms of the settlement with Local 20 are substantially similar to the terms of the CLVNA settlement.

C. Discussions Between the Debtors and CNA

The Debtors entered into three prepetition CBAs with CNA regarding the Hospitals which are still effective:

- 1) SLRH CNA Local Contract 2016–2020 [Doc. No. 1182, Ex. 1] (the "CNA Saint Louise CBA"), between Saint Louise and the CNA;
- 2) OCH CNA Local Contract 2016–2020 [Doc. No. 1182, Ex. 2] (the "CNA O'Connor CBA"), between O'Connor and CNA;
- 3) CNA/VHS Contract 12/22/16–12/21/20 [Doc. No. 1182, Ex. 3] (the "CNA Master CBA"), between VHS and CNA.

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CNA represents approximately 544 registered nurses at O'Connor and approximately 204 registered nurses at St. Louise.

Shortly after the Petition Date, Andrew Prediletto, the Assistant Director of Collective Bargaining for the CNA, contacted Steven Sharrer, VHS' Chief Human Resources Officer, and requested a meeting regarding the CBAs affecting CNA. Decl. of Andrew Prediletto [Doc. No. 1270] (the "Prediletto Decl.") at ¶¶2-4. Mr. Sharrer responded that a meeting would be premature because the Debtors were not yet seeking to sell the Hospitals. *Id.*

Under the Bidding Procedures Order, December 5, 2018, was the deadline for parties to submit bids for the Hospitals. As noted, Santa Clara was the only party that submitted a bid.

On December 6, 2018, the Debtors met with CNA and orally presented the Debtors' proposal to (a) reject and terminate the CNA Saint Louise CBA and CNA O'Connor CBA and (b) to modify the CNA Master CBA to remove, reject, and terminate all references to Saint Louise and O'Connor contained therein, for the purpose of effectuating rejection of the CNA Saint Louise CBA and CNA O'Connor CBA. Adcock Decl. at ¶13. The Debtors explained that they were seeking authorization to reject the CBAs because the Debtors would no longer be operating the Hospitals after the sale closed. *Id.* at ¶12.

On December 7, 2018, the Debtors provided CNA a letter memorializing the proposal made at the December 6 meeting (the "CNA Letter"). The CNA Letter provides in relevant part:

The [Bidding Procedures Order] established a deadline of December 5, 2018 ... whereby interested parties who met certain criteria ... could submit bids to purchase the assets and liabilities of [the Hospitals]. After the Debtors undertook a thorough marketing process to sell in whole or in part the Hospitals, no Alternative Qualified Bidder (or any other bidder) has presented an Alternative Qualified Bid (or any other bid) by the Bid Deadline, nor has any part requested additional time within which to submit such a bid. So, at this time, besides the County [of Santa Clara], no party has expressed material interest in acquiring and operating the Hospitals....

Because the APA is for the sale of all operations of [the Hospitals], after the Sale closes (which we expect to occur in late February or March 2019), the Debtors will no longer operate those Hospitals and, therefore, will have no

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further need for the [CNA Saint Louise CBA] and [CNA O'Connor CBA], and, as the County will only acquire the Hospitals free from the CBAs, aver that rejection of them is necessary to permit reorganization of the Debtors because the only bidder in a thorough marketing and auction process will not assume the CBAs.

Corrected Decl. of Sam J. Alberts [Doc. No. 1202] (the "Alberts Decl.") at Ex. 1.

On December 13, 2018, the Debtors sent a redline copy of the CNA Master CBA showing all proposed changes to that document. The changes eliminated references to Saint Louise and O'Connor but did not alter any provisions related to the Debtors' other hospitals that are not part of the sale.

On December 13, 2018, CNA sent a letter seeking clarification about the Debtors' proposal regarding the CBAs [Doc. No. 1332, Ex. 6] (the "CNA Initial Letter"). The CNA Initial Letter asserted that the Debtors' proposed rejection of the CNA Saint Louise CBA and CNA O'Connor CBA in their entirety "is an overbroad and unnecessary step." Doc. No. 1332 at Ex. 6. Debtors responded in writing on December 18, 2018:

As previously stated, because Santa Clara County ... will not (and by operation of law cannot) assume CBAs and the Debtors will have no operations at [Saint Louise] and [O'Connor] upon closing of the sale to [Santa Clara County], no terms of the [CNA O'Connor CBA] and [CNA Saint Louise CBA] warrant survival. To the contrary, survival of any terms would unduly burden the Debtors' estates and their ability to reorganize. Due to these facts, the Debtors' proposal is the rejection and termination, *in toto*, of the [CNA Saint Louise CBA] and the [CNA O'Connor CBA].

Doc. No. 1332, Ex. 7.

The CNA Initial Letter also sought "information from Verity regarding Verity's and/or Cain Brothers' interactions with other entities who were interested in purchasing [Saint Louise] or [O'Connor], specifically those who advanced far enough in the process to execute nondisclosure agreements." Doc. No. 1332, Ex. 6. In response, the Debtors agreed to provide information about the bidding process, subject to confidentiality restrictions. The Debtors further agreed to arrange a meeting with either Cain Brothers or the Debtors regarding the bidding process.

CNA did not respond to the Debtors' offers for a meeting with Cain or for other

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sale information until January 16, 2019. On that date, CNA sent the Debtors an e-mail providing in relevant part:

The Union would like to discuss with Verity an agreement that would modify the successor clause to ensure that it is not in conflict with the APA in exchange for severance pay to nurses to mitigate any financial losses incurred by such a modification.

Doc. No. 1332, Ex. 8.

On January 19, 2019, the Debtors replied as follows:

Verity has already stated, repeatedly, that it is willing to provide severance for people who are not rehired. As such, I am not sure what, if anything actually remains in dispute. That said, if there is something else at issue, please advise. Always happy to talk by phone.

Doc. No. 1332, Ex. 8.

On January 22, 2019, the Debtors provided CNA with redacted Indications of Interest (the "IOIs") submitted by potential bidders prior to the Petition Date. The delay in the production of the IOIs resulted from the inability of the Debtors and CNA to agree upon the form of a confidentiality agreement.

D. Discussions Between the Debtors and SEIU-UHW

The Debtors are parties to a prepetition CBA with SEIU-UHW (the "SEIU-UHW CBA") that remains in effect. SEIU-UHW represents approximately 190 employees who work at Saint Louise and 512 employees who work at O'Connor. The employees work in a variety of positions, including environmental and food services, clerical support, medical records, and various technician positions (including radiology technicians, pharmacy technicians, and respiratory care practitioners).

On December 11, 2018, the Debtors met with SEIU-UHW, and orally presented the Debtors' proposal to modify the SEIU-UHW CBA to provide for the termination of the agreement's provisions with respect to Saint Louise and O'Connor. (The Debtors had sought to conduct the meeting immediately after the December 5, 2018 bid deadline, but SEIU-UHW was not available to meet until December 11.) On December 13, 2018, the Debtors provided SEIU-UHW a letter memorializing the proposal made at the December 11 meeting (the "SEIU-UHW Letter").

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On December 14, 2018, SEIU-UHW's counsel sent 30 discrete information requests to the Debtors. Among other things, SEIU-UHW asked for information regarding the effective date of the proposed modification; the efforts that were made to find a bidder who would assume the SEIU-UHW CBA; and the information provided by the Debtors to potential bidders regarding the costs of operating under the SEIU-UHW CBA. On January 3, 2019, the Debtors provided written responses to SEIU-UHW's requests for information.

On January 9, 2019, SEIU-UHW sent an additional 23 requests for information. On January 12, 2019, the Debtors provided written responses. On Friday, January 11, 2019, SEIU-UHW requested a meeting with the Cain, the Debtor's financial advisors, the following Monday afternoon. The Debtors arranged for the meeting and SEIU-UHW met with Cain on Monday, January 14, 2019.

On January 14, 2019, SEIU-UHW served the Debtors with six additional information and document requests. The Debtors took the position that certain of the information requested by SEIU-UHW could be produced only if subject to a confidentiality agreement. After attempts to negotiate a confidentiality agreement proved unsuccessful, the Debtors and SEIU-UHW reached an agreement under which certain information that the Debtors contended was confidential—the Indications of Interest of nonbidders—would be produced to SEIU-UHW, with the names and identity information redacted. On January 21, 2019, the Debtors provided SEIU-UHW with redacted versions of the Indications of Interest.

On January 24, 2019, SEIU-UHW asked the Debtors if they would "consider paying severance to all employees in exchange for [SEIU-UHW's] withdrawal of its opposition." E-mail from Caitlin E. Gray to the Debtors, dated January 24, 2019, at 6:09 p.m. [Doc. No. 1501-2 at 18]. On January 28, 2019, the Debtors advised SEIU-UHW that "[w]ith respect to severance, the Debtors cannot agree to permit SEIU employees who are rehired by Santa Clara County allowed severance claims, as this would result in more favorable treatment than that which is being provided to other union employees. The Debtors, however, remain willing to provide SEIU employees who are not rehired by Santa Clara County an allowed claim for severance in the amount calculated under the SEIU CBA under the same treatment terms as agreed to with Local 20 and CLVNA." E-mail from Sam J. Alberts to SEIU-UHW, dated January 28, 2019 at 5:03 p.m. [Doc. No. 1501-2 at 14].

E. Summary of Papers Filed in Connection with the Rejection Motions

The Debtors' primary arguments in support of the Rejection Motions may be

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summarized as follows:

- 1) Rejection of the CBAs is necessary, equitable, and sought in good faith because, absent such relief, the Debtors would be unable to sell the Hospitals to Santa Clara, who was the only bidder for the Hospitals after a thorough marketing process. Pursuant to Cal. Gov't Code § 3500, known as the Meyers-Milias-Brown Act, Santa Clara cannot assume the CBAs, because Santa Clara's existing employees are already represented by a union. The Meyers-Milias-Brown Act requires Santa Clara to negotiate all collective bargaining issues with this pre-existing union.
- 2) Throughout the sale process, the Debtors' stated preference has been for buyers to accept assignment of the CBAs. Notwithstanding this preference, Santa Clara would not, and could not, take assignment of the CBAs.
- 3) Once the sale to Santa Clara closes, the Debtors will have no operational activities at the Hospitals, and accordingly will no longer have any need or use for the employees working at those facilities or the CBAs at issue.

SEIU-UHW's primary arguments in opposition to the Rejection Motion may be summarized as follows:

- 1) To reject the SEIU-UHW CBA, Debtors must "propose modifications to the existing labor contract without which the debtor cannot obtain confirmation." *In re Pierce Terminal Warehouse, Inc.*, 133 B.R. 639, 646–47 (Bankr. N.D. Iowa 1991). "The Court must also consider whether the employer, although needing some modifications to successfully reorganize, has sought changes to the contract which materially exceed such needs. The result of such overreaching is that rejection will be prohibited." *Id.* Although Santa Clara will not assume the SEIU-UHW CBA, the CBA could continue between SEIU-UHW and the Debtors, with claims for breach of contract allowed. This would allow union members to make claims for severance payments under the agreement and claims for ongoing minimum pension funding contributions required under the CBA.
- 2) The Debtors have stated that rejection of the SEIU-UHW CBA is necessary to "avoid administrative expenses which can dilute creditors' recoveries and even make confirmation of a plan impossible." *See* Debtors' Responses to Information Request No. 5 [Doc. No. 1273, Ex. B] at ¶5. The Debtors' desire to minimize administrative claims does not establish that rejection is necessary for plan confirmation.

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- 3) Even if the Debtors could establish that rejection is necessary and that all affected parties are treated fairly and equitably, the Rejection Motion must still be denied because the Debtors failed to meet with SEIU-UHW at reasonable times to confer in good faith as required by § 1113. The Debtors entered into the APA with Santa Clara before commencing negotiations with SEIU-UHW. The Debtors should have engaged with SEIU-UHW before the APA was finalized, and should have provided SEIU-UHW a meaningful opportunity to engage with Santa Clara regarding the terms of the APA. Once the Debtors signed the APA, their bargaining leverage with Santa Clara was markedly diminished. In *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996), the court rejected the Debtor's attempt to reject a CBA where, as here, the Debtors did not seek rejection of the CBA until after they had entered into a sale agreement with a party not willing to assume the CBA. The *Lady H* court explained "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise," and held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." *Lady H*, 193 B.R. at 242. Similarly, in *In re Karykeion, Inc.*, 435 B.R. 663, 682 (Bankr. C.D. Cal. 2010), the court stated that the "[u]nions are correct that beginning negotiations when one party is already locked into a position does not constitute good faith."

CNA's primary arguments in opposition to the Rejection Motion (to the extent they differ from the arguments presented by SEIU-UHW) may be summarized as follows:

- 1) The Debtors have no external incentive to bargain in good faith because they are liquidating their assets. *See, e.g., In Re United States Truck Co. Holdings*, 2000 Bankr. Lexis 1376, *89 (Bankr. E.D. Mich. Sept. 29, 2000) ("Where a debtor is liquidating under Chapter 11 and is no longer operating a business, there is inherently a lack of an important incentive to bargain in good faith. . . Debtor no longer needs its employees to keep its business operating and consequently does not have to bargain to avert the threat of a work stoppage or a strike.") Under these circumstances, the Court must carefully scrutinize the Debtors' compliance with the requirements of § 1113. Consequently, the Debtors' refusal to meet with CNA prior to execution of the APA with Santa Clara should not be easily excused due to the pressures and constraints

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inherent in any bankruptcy sale.

- 2) Debtors have already violated the successor clause of the CBAs by (1) signing the APA with Santa Clara and (2) moving to sell the Hospitals prior to moving to reject the contracts under § 1113. In order to avoid an administrative claim against the estate for breach of contract, Debtors would be required to reject the CBAs retroactively. However, the Ninth Circuit Bankruptcy Appellate Panel has stated that "[b]ecause a CBA may not be rejected retroactively, unilateral breaches prior to rejection cannot be related to unsecured status." *In re World Sales*, 183 B.R. 872 (BAP 9th Cir. 1995).

The Debtors' primary arguments in Reply to the Oppositions of the Objecting Unions may be summarized as follows:

- 1) The Objecting Unions are seeking to block rejection of the CBAs in order to increase the estate's administrative liabilities. This is not a legitimate basis to oppose § 1113 relief and cuts directly against the "fair and equitable" perspective from which such relief must be granted. Faced with similar facts, the court in *In re Chicago Const. Specialties, Inc.*, 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) concluded that "the only purpose of leaving the CBA in place would be to afford the Respondents the opportunity for an augmented administrative claim rather than a general unsecured claim. Naturally, a creditor would prefer to maximize its distribution from the bankruptcy estate. Nonetheless, section 1113 may not be used to elevate a union's position at the cost of any distribution to any other creditor. Such would be contrary to the purpose of section 1113 and the Bankruptcy Code as a whole."
- 2) The Objecting Unions speculate that had they been permitted to actively participate in the sale process, they may have achieved an enhanced outcome for their members. This argument fails, because the only party that bid for the assets was Santa Clara, and it is indisputable that Santa Clara cannot assume the CBAs under California law. Further, § 1113 "does not impose any obligation on the Debtors to ensure that the [union] can negotiate the best possible deal with the new owner of the Debtors' operations." *In re Walter Energy, Inc.*, 542 B.R. 859, 890 (Bankr. N.D. Ala. 2015), *aff'd sub nom. United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (N.D. Ala. 2016), and *aff'd sub nom. United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016), *aff'd sub nom. In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir.

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2018). "The section 1113 inquiry focuses solely on the proposal made by the Debtors, not the other parties, and the UMWA is not entitled to a veto power over a going concern sale when the undisputed evidence establishes that it is the best way to maximize value for all creditors and provide the best chance for future employment for the Debtors' employees, including, but not limited to, UMWA-represented employees." *Id.*

- 3) The Objecting Unions cannot speculate on potential transactions as an alternative without presenting a proposed specific transaction to the Court—which the Unions did not do here.
- 4) The Debtors have provided up-to-date, relevant information to the Objecting Unions. The burden has now shifted to the Unions to show that the information provided is not sufficient. *See In re Karykeion, Inc.*, 435 B.R. 663, 680 (Bankr. C.D. Cal. 2010) ("The debtor bears the initial burden of producing evidence of the information that it has provided to the union. The burden then shifts to the union to rebut the debtor's explicit or implicit assertion that such evidence is sufficient to enable an evaluation of the proposal.").

On January 28, 2019, CNA filed a Sur-Reply, which may be summarized as follows:

- 1) Prior to the Petition Date, potential bidders submitted Indications of Interest (IOIs) in the Debtors' assets. One of these parties—Entity A—offered to assume the outstanding pension obligations in its asset purchase. In response to discovery requests filed in connection with the Motions to Reject, the Debtors have stated that Entity A's "proposal did not provide sufficient value to the secured creditors." Doc. No. 1273-3 at 6. The Debtors further stated that they "advised this party to improve its financial offer in order to be considered as a stalking horse bidder," but that the party did not submit a revised bid. *Id.*
- 2) The Debtors' treatment of the IOI submitted by Entity A further illustrates why CNA should have been involved in the process of selecting the stalking horse bidder. The Debtors made the decision, without CNA's involvement, that Entity A's bid was inadequate because it did not provide sufficient value to secured creditors. The purpose of § 1113 "is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree." *In re Century Brass Prods. Inc.*, 795 F.2d 265, 273 (2d Cir. 1986). By instructing Entity A to submit a bid providing additional value to secured creditors, the Debtors made the determination that the burden of restructuring should fall upon the nurses, rather than the secured creditors.

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On January 28, 2019, the Debtors filed a request to strike CNA's Sur-Reply, on the ground that it was not authorized. In the alternative, the Debtors assert that the Court should overrule the arguments contained in the Sur-Reply. Debtors assert that the prepetition IOIs are not relevant given that none of the IOIs resulted in a formal bid.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Rejection Motions. **[Note 1]** The Committee believes that it is in the best interest of its overall constituency to close the sale to Santa Clara and to mitigate to the maximum extent possible the exposure of the Debtors' estates to postpetition claims arising under the CBAs with respect to the facilities being sold.

On January 29, 2019, the Court ordered the parties to submit further briefing addressing the following issues:

- 1) In the context of this case, should the Court interpret "necessary to permit reorganization of the debtor" to mean "necessary to permit the § 363 sale of the Hospitals" or "necessary to enable the Debtors to obtain confirmation of a plan of liquidation"?
- 2) Is it possible for the Debtors to close the sale if, as contemplated by the Unions, the Court denies the Rejection Motions, allows the CBAs to remain in effect between the Debtors and the Unions, and allows the Unions an administrative claim for breach of the CBAs?
- 3) What impact would allowance of an administrative claim by the Unions have upon the Debtors' ability to confirm a plan of liquidation?

See Order: (1) Requiring Further Briefing on Debtors' Motions to Reject Collective Bargaining Agreements and (2) Continuing Hearing on Motions from January 30, 2019 to February 8, 2019 at 10:00 a.m. [Doc. No. 1411] (the "Briefing Order").

In response to the Briefing Order, Santa Clara stated that it was willing to close the sale, absent rejection of the CBAs, only if the Objecting Unions executed stipulations fully and irrevocably waiving any enforcement of the CBAs against Santa Clara. The Objecting Unions assert that they could be provided administrative claims for breach of the CBAs without impairing the Debtors' ability to confirm a liquidating plan. SEIU-UHW estimates that it would assert an administrative claim, attributable to employee severance benefits, of approximately \$3 million. CNA estimates that it would assert an administrative claim of approximately \$8.56 million, attributable to

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the lower wages its members will be receiving under their new employment contracts with Santa Clara.

The Debtors assert that providing the Objecting Unions the administrative claims they seek would render the estates administratively insolvent, making it difficult for the Debtors to confirm a liquidating plan. According to the Debtors' best estimates, approximately \$25 to \$75 million will be available to satisfy administrative claims. The Debtors' calculations assume that all unions who are parties to CBAs with the Debtors would receive similar administrative claims treatment. The Debtors assert that providing the severance benefits requested by SEIU-UHW to all unions would cost \$71 million. Administrative treatment for other union benefits, including unused paid time off, sick leave, and holiday pay (collectively, "PTO") would cost an additional \$35 million, according to the Debtors.

The Debtors, the Committee, and SEIU-UHW argue that the phrase "necessary to permit reorganization of the debtor" should be interpreted as "necessary to effectuate the Debtors' going-concern liquidation efforts." The Debtors assert that such an interpretation is appropriate given that in the Debtors' view, the most beneficial reorganization strategy requires two or more major sales of assets, instead of a single sale of substantially all the Debtors' assets. CNA maintains that the phrase should be interpreted as "necessary to permit the § 363 sale of the Hospitals."

II. Findings and Conclusions

A. The Court Will Consider CNA's Sur-Reply

The Local Bankruptcy Rules do not authorize the filing of a Sur-Reply. However, § 1113 contemplates bargaining between the Debtors and the unions that takes place up until the date that the motion regarding the CBAs is heard. *See* § 1113(b) (requiring the Debtors to meet with the unions' authorized representative "at reasonable times" during "the period beginning on the date of the making of a proposal ... and ending on the date of the hearing ..."). A motion to modify or terminate a CBA is unlike most motions heard by the Court, in that the statutory predicate for the motion explicitly contemplates that the positions of the parties may change as a result of negotiation up until the hearing date. Therefore, the Court will consider CNA's Sur-Reply as well as the rebuttal arguments made by the Debtors in their request to strike the Sur-Reply.

B. The Rejection Motions Are Granted

Section 1113 provides:

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(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, ... may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b)

(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept

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such proposal without good cause; and

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(3) the balance of the equities clearly favors rejection of such agreement.

"Bankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test" first set forth in *In re Am. Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984). See *In re Karykeion, Inc.*, 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010); see also *In re Family Snacks, Inc.*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001) ("Virtually every court that is faced with the issue of whether a Chapter 11 debtor may reject its collective bargaining agreement utilizes a nine-part test that was first set down by the bankruptcy court in *In re American Provision Co.*"). The *American Provision* factors are as follows:

- 1) The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
- 2) The proposal must be based on the most complete and reliable information available at the time of the proposal.
- 3) The proposed modifications must be necessary to permit the reorganization of the debtor.
- 4) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
- 5) The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
- 6) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the Union.
- 7) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
- 8) The Union must have refused to accept the proposal without good cause.
- 9) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

American Provision, 44 B.R. at 909.

Courts apply the *American Provision* factors even where a debtor is liquidating its assets and does not intend to continue in business after emerging from bankruptcy. Courts reason that "reorganization," as used in § 1113(b)(1)(A), is "generally

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understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code's priority scheme." *Family Snacks*, 257 B.R. at 895. Some courts have held that where, as here, the Debtors are liquidating their assets, the phrase "necessary to permit the reorganization of the debtor" means "necessary to achieve a sale under § 363 of the Bankruptcy Code." *Alpha Nat. Res., Inc.*, 552 B.R. 314, 333 (Bankr. E.D. Va. 2016); *see also Walter Energy*, 542 B.R. at 890 (requiring that the debtor's proposal "be necessary to permit ... those modifications necessary to consummate a going-concern sale"); *In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) (finding that the debtor had proven that rejection was necessary when the closing of a § 363 sale was contingent on rejection of a collective bargaining agreement). Others courts have concluded that in a liquidating case, the phrase "necessary to permit reorganization of the debtor" means "necessary to accommodate confirmation of a Chapter 11 plan." *Family Snacks*, 257 B.R. at 895.

In the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan." This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case. From the outset, the Debtors have stated their intent to sell the six hospitals that they operate as going concerns, and use the proceeds from the sales to fund a plan of liquidation. This process is well underway. The Court has already approved the sale of two of the Debtors' hospitals to Santa Clara, and recently approved bidding procedures pertaining to the auction of the remaining four hospitals.

i. Debtors Have Not Unilaterally Breached the CBAs

Before addressing the *American Provision* factors, the Court finds it important to emphasize that there is no merit to CNA's contention that the Debtors have unilaterally breached the CBA's successorship provisions by executing the APA with Santa Clara. The APA was a necessary inducement for Santa Clara to serve as the stalking horse bidder. Santa Clara's role as the stalking horse bidder was the optimal means of marketing the Hospitals. Such marketing was intended to induce the participation of other bidders who may have been willing to assume the CBAs. Unfortunately no such bidders emerged. That does not diminish the reality that the APA was the best means of securing bids favorable to the Objecting Unions.

The CBA's successorship provisions bar the sale of the Hospitals to any entity that does not assume the agreements. By moving to reject the CBAs prior to closing on the

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sale contemplated by the APA, the Debtors have fulfilled their legal obligations. Nothing within § 1113 requires the Debtors to obtain rejection of the CBAs prior to execution of an APA. Indeed, such a result would be counter-productive to the interests of the Objecting Unions, as the APA provided the best hope that an entity willing to assume the CBAs might emerge.

Adopting CNA's position would severely circumscribe the Debtors' ability to execute APAs beneficial to the marketing of their assets. Such a result would be contrary to § 1113, which expressly contemplates that it is possible for Debtors to reject a CBA in connection with an asset sale.

ii. Factors 1, 2, 6, and 7

Within the context of this case, factors 1, 2, 6, and 7 are related. Under these factors, the Debtor must make a proposal to the unions (factor one) based upon the most complete and reliable information available at the time of the proposal (factor two). Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing CBA, the debtor must meet at reasonable times with the unions (factor six). At the meetings, the debtor must confer in good faith in attempting to reach mutually satisfactory modifications to the collective bargaining agreement (factor seven).

According to the Objecting Unions, the Debtors cannot establish that they met and conferred in good faith regarding modification of the CBAs. The Objecting Unions' position is that the Debtors should have initiated negotiations before the APA with Santa Clara had been executed. Had negotiations commenced at this time, the Objecting Unions assert, the Debtors would have had greater leverage over Santa Clara, and it might have been possible for the Debtors to obtain additional concessions favorable to the unions. The Objecting Unions rely upon *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996) for the proposition "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise." The *Lady H* court held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." *Id.*

The Objecting Unions' reliance upon *Lady H* is misplaced. In *Lady H*, the debtor's CEO unilaterally obtained a broker to market the assets at issue, in violation of § 327. As a result of this violation, the unions received no notice of the marketing of the assets. *Lady H*, 193 B.R. at 242. The lack of notice deprived the unions of the

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"opportunity to participate in whatever process a debtor engages in to find a suitable buyer." *Id.* Here, by contrast, the Debtors have stated their intent to sell the Hospitals from the inception of the case. The Debtors fully complied with the requirements of § 327 when retaining Cain to market the Hospitals. As of October 1, 2018, the unions were aware of the APA and Santa Clara's decision to serve as the stalking horse bidder.

In addition, the debtor in *Lady H* did not pursue a possible sale to another buyer who was willing to assume the union's CBA. *Id.* Instead, the debtor obligated itself to a buyer that wanted to reject the CBA, primarily because that buyer had agreed to employ the debtor's officers at inflated salaries. *Id.* In contrast to the facts of *Lady H*, the record shows that the Debtors executed the APA with Santa Clara to maximize the proceeds available to the estate, not to enrich insiders, and that the Debtors aggressively marketed the Hospitals, expressing a preference for bids that would assume the CBAs. The entire purpose of the APA with Santa Clara was to produce additional favorable bids, some of which might include assumption of the CBAs. The Debtors were not "locked in" under the APA; the APA was merely the first step in a thorough marketing process. The fact that no other bidders emerged does not indicate that there were problems with the APA; it instead demonstrates that the Hospitals face such serious operational challenges that no buyers aside from Santa Clara were interested in purchasing them.

The only temporal requirement imposed by the statute regarding the Debtors' bargaining obligations is that the bargaining commence prior to the filing of a motion seeking relief under § 1113. § 1113(b)(1)(A). Here, the Debtors fulfilled this requirement. The Debtors met with CNA on December 6, 2018 and met with SEIU-UHW on December 11, 2018, prior to filing the Rejection Motions on January 2, 2019.

The decision in *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001) shows that the Debtors are not obligated to commence bargaining at the inception of the case. Similar to this case, in *Family Snacks* the debtor commenced negotiations only after it had sold its assets. The *Family Snacks* court held that the debtor's decision to not commence negotiations until after the asset sale did not automatically bar the debtor from obtaining relief under § 1113. *Family Snacks*, 257 B.R. at 895–96.

CNA contends that the manner in which the Debtors treated certain non-binding Indications of Interest (the "IOIs") submitted prior to the Petition Date by various potential bidders establishes that the Debtors have not negotiated in good faith. CNA

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points out that the IOI submitted by Entity A provided for the assumption of the Debtors' unfunded pension liabilities. According to CNA, to meet the requirements of § 1113, the Debtors were required to inform CNA of these IOIs at the time they were received. The implication of CNA's argument is that had the Debtors done so, it might have been possible to structure a sale in which the purchaser assumed the CBAs.

CNA's argument suffers from several flaws. First, CNA places far more weight upon the Indications of Interest than they can reasonably bear. An Indication of Interest is just that—a statement that a party is considering bidding for assets. For whatever reason, after conducting its due diligence, Entity A concluded that it would not further pursue its Indication of Interest.

CNA implies that had only the Debtors put CNA into contact with Entity A at the time the IOI was submitted, the result might have been different. Given the financial burdens imposed upon employees represented by CNA in connection with this bankruptcy, CNA's optimism is understandable. However, in the Court's view, the suggestion that the Debtors could have structured a more favorable transaction with Entity A falls into the category of "hopeful wishes, mere possibilities and speculation." *Karykeion, Inc.*, 435 B.R. at 678. Had Entity A been serious about purchasing the Hospitals, it would have at the very least submitted a formal bid.

Finally, CNA's argument incorrectly assumes that § 1113 requires the Debtors to facilitate communication between unions and third-party potential asset purchasers. Section 1113 contains no such requirement.

iii. Factor 3

Factor 3 requires that the proposed modifications must be necessary to permit the reorganization of the debtor. As discussed above, within the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan."

Two lines of authority exist as to the meaning of the word "necessary." In *Wheeling–Pittsburgh Steel Corp. v. United Steelworkers of America*, 791 F.2d 1074 (3d Cir.1986), the Third Circuit defined "necessary" as synonymous with "essential." The Second Circuit has defined "necessary" more broadly. In *Truck Drivers Local 807 v. Carey Transportation, Inc.*, 816 F.2d 82 (2d Cir.1987), the court held that "the necessity requirement places on the debtor the burden of proving that its proposal is made in good faith, and that it contains necessary, but not absolutely minimal, changes that will enable the debtor to complete the reorganization process

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successfully.” The parties have not cited, and the Court has been unable to locate, any binding Ninth Circuit authority as to the scope of the word “necessary.”

The Court finds the Second Circuit’s approach to be better reasoned. As explained in *Carey Transportation*, the Third Circuit’s strict definition conflicts with other provisions of the statute:

Because the statute requires the debtor to negotiate in good faith over the proposed modifications, an employer who initially proposed truly minimal changes would have no room for good faith negotiating, while one who agreed to any substantive changes would be unable to prove that its initial proposals were minimal. Thus, requiring the debtor to propose bare-minimum modifications at the outset would make it virtually impossible for the debtor to meet its other statutory obligations.

Carey Transportation, 816 F.2d at 89.

Further, the “legislative history strongly suggests that ‘necessary’ should not be equated with ‘essential’ or bare minimum.” *Id.* A prior version of § 1113 would have permitted rejection only if the debtor’s proposal contained “such ‘minimal modifications in the contract that would permit the reorganization, taking into account the best estimate of the sacrifices expected to be made by all classes of creditors and other affected parties.’” *Wheeling-Pittsburgh Steel Corp.*, 791 F.2d at 1083 (quoting 130 Cong. Rec. S6181-82 (daily ed. May 22, 1984)). Congress rejected this language in favor of broader language permitting rejection if “necessary to permit the reorganization of the debtor”

Applying the Second Circuit’s “necessary” standard to the instant case, the Court notes that to confirm the liquidating plan which they envision, the Debtors are first required to sell the six hospitals as going concerns. Selling the hospitals on a going-concern basis is necessary to maximize proceeds to the estate. The Debtors’ operational difficulties and mounting losses require that the hospitals be sold quickly. In a declaration filed in support of the Debtors’ First Day Motions, the Debtors’ CEO Richard Adcock testified that the hospital system was losing \$175 million annually on a cash flow basis, or approximately \$480,000 per day. First Day Decl. of Richard G. Adcock [Doc. No. 8] at ¶ 95.

The sale to Santa Clara is a key component of the Debtors’ overall plan of liquidation, and the CBAs must be rejected in order for the sale to close. Under Cal. Gov’t Code § 3500, Santa Clara cannot assume the CBAs, because Santa Clara’s

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existing employees are already represented by a union. Santa Clara is statutorily required to conduct all collective bargaining negotiations with this existing union. Santa Clara is the only party who submitted a formal bid for the Hospitals, which were thoroughly marketed by Cain (see Section I.A., above, for a discussion of Cain's marketing efforts).

The Sale Order provides that closing of the sale "is conditioned upon the rejection, termination and/or modification of all applicable CBAs related to [O'Connor] and [Saint Louise], pursuant to § 1113 or as otherwise agreed to between the Debtors, the respective unions, and as approved by the Court." Sale Order at ¶18. The Sale Order further provides that the "Debtors must have resolution of the collective bargaining agreements ... that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to [Santa Clara] closing on the proposed Sale pursuant to the APA." *Id.* at ¶33.

Notwithstanding its rights under the Sale Order and APA, Santa Clara has stated that if CNA and SEIU-UHW stipulate to irrevocably waive any claims under the CBAs against Santa Clara, it is willing to close the sale absent rejection of the CBAs. No such stipulation is presently before the Court. However, even if the Objecting Unions so stipulated, the Court finds that rejection of the CBAs would still be necessary to enable the Debtors to confirm a liquidating plan.

The most likely result of the Debtors' failure to obtain rejection of the CBAs would be the accrual of substantial administrative claims in favor of the Objecting Unions. In assessing the effect of such administrative claims upon the Debtors' ability to confirm a liquidating plan, the Court does not confine its analysis to the potential claims of SEIU-UHW and CNA. The Debtors are parties to CBAs with many different unions. While not identical, the terms of these CBAs are broadly similar. Granting an administrative claim to SEIU-UHW and CNA would most likely require the Court to grant administrative claims to the other unions.

The uncontroverted testimony of David E. Galfus establishes that the granting of administrative claims to all the unions would most likely render the estate administratively insolvent. Mr. Galfus is the Managing Director of Berkeley Research Group's Restructuring and Transaction Advisory. Galfus Decl. [Doc. No. 1507] at ¶ 1. He estimates that after sale of the Debtors' assets and payment of claims secured by those assets, between \$25 and \$75 million will be available to pay administrative claims. *Id.* at ¶¶ 6-7. Mr. Galfus projects that providing the unions administrative claims would impose liabilities against the estate of approximately \$71 million on account of severance, and approximately \$35 million on account of paid time off,

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holiday pay, and extended sick leave. *Id.* at ¶¶ 12–13.

The administrative claims of the unions alone would total approximately \$106 million, far in excess of the \$25 to \$75 million that will be available to pay all administrative claimants. Allowing the CBAs to remain in place would almost certainly render the estate administratively insolvent, which in turn would make it exceptionally difficult for the Debtors to confirm a plan of liquidation. For this reason, the Court finds that rejection of the CBAs is necessary to enable the Debtors to confirm a liquidating plan.

Others courts have looked with disfavor upon unions who seek to maintain CBAs for the sole purpose of augmenting an administrative claim. The facts of *In re Chicago Const. Specialties, Inc.*, 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) are similar to this case. In *Chicago Const.*, the debtor moved to reject a CBA because it was no longer operating. Overruling the unions' objections to rejection, the court held:

As noted above, the only purpose of leaving the CBA in place would be to afford the [unions] the opportunity for an augmented administrative claim rather than a general unsecured claim. Naturally, a creditor would prefer to maximize its distribution from the bankruptcy estate. Nonetheless, section 1113 may not be used to elevate a union's position at the cost of any distribution to any other creditor. Such would be contrary to the purpose of section 1113 and the Bankruptcy Code as a whole.

Chicago Const. Specialties, 510 B.R. at 221.

Here, the Debtors are in the process of selling the Hospitals to Santa Clara, and will no longer operate the Hospitals once the sale has closed. As was the case in *Chicago Const.*, it makes little sense to require the Debtors to remain bound by CBAs that pertain to assets which they will no longer operate.

iv. Factor 4

Factor 4 requires that the proposed modifications to the CBAs treat all creditors, the Debtors, and all affected parties fairly and equitably. As explained by the court in *Walter Energy*:

This requirement "spread[s] the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree." "Courts take a flexible approach in considering what constitutes fair and equitable treatment

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due to the difficulty in comparing the differing sacrifices of the parties in interest." A debtor can meet the requirement "by showing that its proposal treats the union fairly when compared with the burden imposed on other parties by the debtor's additional cost-cutting measures and the Chapter 11 process generally."

Walter Energy, 542 B.R. at 892.

In applying this factor, it is important to emphasize how the Debtors arrived at this point. In early 2014, facing serious operating losses, the Debtors began evaluating strategic alternatives. First Day Decl. of Richard G. Adcock [Doc. No. 8] at ¶ 87. To continue operations until a contemplated sale or recapitalization could close, the Debtors borrowed \$125 million in 2014. *Id.* In 2015, the Debtors entered into a recapitalization transaction with BlueMountain Capital Management LLC ("BlueMountain"). BlueMountain injected \$100 million of capital and arranged for an additional \$160 million of loans. *Id.* at ¶¶ 88–89. Despite BlueMountain's infusion of cash, the health system did not prosper. *Id.* at ¶ 93.

In July 2017, NantWorks, LLC loaned another \$148 million to the Debtors. *Id.* at ¶ 94. Notwithstanding these additional capital infusions and the retention of various consultants and experts to improve operations, losses of approximately \$175 million annually continued to mount. *Id.* at ¶ 95.

In sum, prior to seeking bankruptcy relief, the Debtors diligently attempted to put their operations on a sound financial footing. The unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs is simply too great to permit the Hospitals to continue to sustainably operate. This reality was confirmed by the recent sales process, in which Santa Clara was the only buyer who expressed interest in purchasing the Hospitals—but only on condition that the sale be free and clear of the CBAs.

Many parties have been required to make sacrifices to permit continued operations of the Hospitals. Under these circumstances, the proposed rejection and/or modification of the CBAs is fair and equitable.

v. Factor 5

Factor 5 requires the Debtors to provide the unions such relevant information as is necessary to evaluate the proposal. The Debtors have satisfied this factor. Before making the proposal, the Debtors provided the Objecting Unions a declaration detailing the Debtors' finances, assets, and liabilities; bankruptcy schedules showing

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the Debtors' financial status; testimony from the Debtors' investment banker; and the APA with Santa Clara. As described in Sections I.C and I.D, above, the Debtors have provided the Unions with substantial additional information subsequent to making the proposal. The Debtors have promptly responded to the Unions' requests for information.

vi. Factors 8 and 9

Under Factor 8, the unions must have refused to accept the proposal without good cause. Under Factor 9, the balance of the equities must clearly favor rejection of the collective bargaining agreement. Both factors are satisfied.

As discussed, the Objecting Unions' goal in opposing the Rejection Motions is to obtain an administrative claim for breach of the CBAs. The Objecting Unions acknowledge that Santa Clara cannot assume the CBAs and have no desire to prevent the sale from closing. While the Objecting Unions' desire to elevate the status of their claims against the estate is certainly understandable, it does not constitute good cause to refuse the Debtors' proposal. *See Chicago Const. Specialties, Inc.*, 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) (holding that "section 1113 may not be used to elevate a union's position").

It would not be fair and equitable to deny rejection of the CBAs or to provide the Objecting Unions with administrative claims. Such a course of action would likely render the estate administratively insolvent, making it very difficult, if not impossible, for the Debtors to confirm a liquidating plan. This result would inure to the detriment of all other stakeholders in these cases.

For the same reasons, the balance of the equities clearly favors rejection of the CBAs. In this respect, the Court further notes that Santa Clara has agreed to make offers of provisional employment to substantially all employees. Individuals hired by Santa Clara will have the opportunity to join the union for Santa Clara employees. The Objecting Unions naturally would prefer to continue to be represented by their own collective bargaining organization; however, this result is precluded by California law.

The bottom line is that the sale negotiated by the Debtors will preserve the jobs of most workers at the Hospitals. Hospital employees will be permitted to join the union representing Santa Clara employees. It is regrettable that the terms of employment with Santa Clara will be less generous than those afforded by the CBAs.

Unfortunately, this result is required to permit the continued operation of the Hospitals and to enable the Debtors to propose and confirm a liquidating plan.

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III. Conclusion

For the reasons set forth above, the Rejection Motions are GRANTED. The settlements between the Debtors and the Engineers and Scientists of California, IFPTE Local 20 and the California Licensed Vocational Nurses Association are APPROVED. The Debtors shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

Note 1

CNA and SEIU-UHW are members of the Committee. CNA and SEIU-UHW recused themselves from the Committee's response to the Rejection Motions.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.20 Hearing
RE: [1192] Motion Debtor's Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union-United Healthcare Workers-West's Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

fr. 1-30-19

Docket 1192

Tentative Ruling:

2/12/2019

See Cal. No. 7.1, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho

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Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.30 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medi-Cal Provider Agreements

fr. 1-30-19; 2-6-19

Docket 0

***** VACATED *** REASON: CONTINUED 2-20-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.40 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medicare Provider Agreements

fr. 1-30-19; 2-6-19

Docket 0

***** VACATED *** REASON: CONTINUED 2-20-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.50 Hearing re [1153] Cure objections

fr. 1-30-19; 2-6-19

Docket 0

Tentative Ruling:

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This hearing is CONTINUED to **February 20, 2019, at 10:00 a.m.**, pursuant to the *Third Stipulation Continuing Hearing Regarding Payor Cure Objections* [Doc. No. 1153].

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#8.00 Further Hearing
RE: [7] Debtor's Emergency Motion For Authority To: (A) Use Cash Collateral
On An Interim Basis Pending A Final Hearing; (B) Grant Replacement Liens;
And (C) Set Final Hearing

fr: 11-19-18

Docket 7

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Debtor's request for continued use of cash collateral is DENIED.

Pleadings Filed and Reviewed

1. Emergency Motion for Authority to: (A) Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Grant Replacement Liens; and (C) Set Final Hearing [Doc. No. 7] (the "Cash Collateral Motion")
 - a. Declaration of Charles DeBus in Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - i. Amended Order Setting Hearing on First Day Motions [Doc. No. 18]
 - ii. Declaration of Tatyana Mencachian re Service of Emergency Motions and Order Setting Hearing on First Day Motions [Doc. No. 25]
 - b. Order (A) Authorizing Debtor to Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Granting Replacement Liens; and (C) Setting Final Hearing [Doc. No. 43] (the "Interim Cash Collateral Order")
 - c. Notice of Hearing on (1) Debtor's Motion for Continued Use of Cash Collateral; and (2) To Borrow Money and to Grant Administrative Priority to Lender [Doc. No. 38]
 - d. Declaration of Troy Finfrock Re Value of Debtor's Business and Equipment [Doc. No. 55] (the "Finfrock Decl.")
 - e. Supplemental Declaration of Charles DeBus in Support of Cash Collateral Motion [Doc. No. 54] (the "Supp. DeBus Decl.")

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F.A.S.S.T. LLC

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- f. Tentative Ruling on Debtor's Continued Interim Use of Cash Collateral [Doc. No. 65] (the "November 19 Ruling")
- g. Notice of hearing on Debtor's Motion for Continued Use of Cash Collateral [Doc. No. 67]
- h. Order Authorizing Debtor to Use Cash Collateral on an Interim Basis [Doc. No. 75] (the "Second Interim Cash Collateral Order")

This is a continued hearing on the Debtor's request for continued use of cash collateral. On November 26, 2018, the Court entered an interim order authorizing the Debtor's continued use of cash collateral through and including February 13, 2019 [Doc. No. 75] (the "Second Interim Cash Collateral Order"). In the Court's November 19 Ruling [Doc. No. 65], the Court stated:

The Court authorizes further interim use of cash collateral through and including **February 13, 2019**. A further interim hearing on the continued use of cash collateral shall take place on February 13, 2019, at 10:00 a.m. . . . The Debtor shall submit additional evidence in support of the continued use of cash collateral by no later than **January 23, 2019**. Such additional evidence shall include, at a minimum, updated financial projections as well as a discussion of the results of the Debtor's efforts to improve the profitability of the gym. The Debtor shall also submit information regarding the results of its investigation as to the validity of the security interests asserted by the secured creditors.

As of the preparation of this tentative ruling, the Debtor has not supplied any supplemental evidence or information in support of its continued use of cash collateral. Accordingly, the Court cannot determine that the secured creditors' interests in cash collateral is adequately protected.

For the reasons set forth above, the Debtor's request for continued use of cash collateral is DENIED.

After the hearing the Court will prepare an order denying the Debtor's request for continued use of cash collateral.

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CONT... F.A.S.S.T. LLC

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The Debtor is also directed to appear at a hearing on **March 5, 2019 at 10:00 a.m.** to show cause why this case should not be converted or dismissed in light of this Court's denial of the Debtor's continued use of cash collateral. The Court will prepare the order.

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

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, February 13, 2019

Hearing Room 1568

10:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#9.00 Hearing
RE: [39] Motion to Vacate Discharge

Docket 39

***** VACATED *** REASON: RESCHEDULED 2-12-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Wednesday, February 13, 2019

Hearing Room 1568

10:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#10.00 Hearing
RE: [29] Motion in Limine re 12/31/18 emails (Urick, Nick)

Docket 29

***** VACATED *** REASON: RESCHEDULED 2-12-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
David Brian Lally

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 13, 2019

Hearing Room 1568

10:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

#11.00 Hearing
RE: [128] Motion to Abandon Debtor's Principal Residence:Supporting
Memorandum & Declarations. Giovanni)

fr. 1-23-19

Docket 128

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Debtor's motion to compel the Trustee to abandon the Property is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtors' Principal Residence [Doc. No. 128] (the "Second Abandonment Motion")
 - a) Declaration of Norma Balboa Regarding Service [Doc. No. 129]
 - b) Notice of Hearing on Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtor's Principal Residence [Doc. No. 131]
- 2) Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 130] (the "Opposition")
 - a) Declaration of Trustee's Counsel in Support of Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 134]
- 3) Reply to Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 133]
 - a) Declaration of Andrea Castro in Support of Reply to Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 135]
 - b) Declaration of Philip E. Kobel in Support of Reply to Chapter 7 Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 136]

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Guillermo Alvarado

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- c) Evidentiary Objection to Declaration of Counsel in Support of Trustee's Opposition to Debtor's Second Motion to Compel Abandonment of Real Property [Doc. No. 137]
- 4) Order Setting Continued Hearing on Debtor's Motion to Compel the Chapter 7 Trustee to Abandon Real Property for February 13, 2019, at 10:00 a.m. [Doc. No. 139]
- 5) Chapter 7 Trustee's Brief Addressing the Court's Preliminary Finding that the Marquez Deed of Trust Has Been Extinguished Under the Doctrine of Merger [Doc. No. 141]
- 6) Supplemental Brief in Support of Motion of Debtor for Order Compelling Chapter 7 Trustee to Abandon Debtor's Principal Residence [Doc. No. 142]
- 7) Creditor Victor Marquez's Brief Re: Whether the Marquez Deed of Trust Was Extinguished by the Doctrine of Merger [Doc. No. 143]

I. Facts and Summary of Pleadings

A. Procedural Background

Guillermo Alvarado (the "Debtor") commenced a voluntary Chapter 7 petition on June 15, 2016. Doc. No. 1. On August 8, 2018, the Debtor filed a motion seeking to compel the Chapter 7 Trustee (the "Trustee") to abandon the Debtor's principal residence, located at 16923 Royal Pines Lane, Canyon Country, CA 91387 (the "Property"). Doc. No. 106 (the "First Abandonment Motion"). On September 6, 2018, the Court denied the First Abandonment Motion, without prejudice, based upon the Debtor's failure to properly set the motion for hearing. Doc. No. 117 (the "Denial Order"). Shortly after issuance of the Denial Order, the Debtor filed a *Notice of Hearing on Motion of Debtors for Order Compelling Chapter 7 Trustee to Abandon Debtor's Principal Residence* [Doc. No. 118] (the "Purported Notice"), but did not re-file the First Abandonment Motion. On September 10, 2018, the Court issued an order striking the Purported Notice from the record. Doc. No. 121 (the "Order Striking Purported Notice"). The Court found that the filing of the Purported Notice was procedurally improper for the following reasons:

Pursuant to the Denial Order, the Motion has been denied without prejudice. As a result, the Debtor is required to file a new motion, and pay the required filing fee, if he wishes to obtain a hearing upon the relief requested. A Motion that has been denied cannot be resuscitated by the filing of a document such as the Purported Notice.

Order Striking Purported Notice at ¶1.

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On December 18, 2018, the Debtor filed a second motion seeking to compel the Trustee to abandon the Property. Doc. No. 128 (the “Second Abandonment Motion”). The Trustee objects to the Second Abandonment Motion.

B. The Trustee’s Related Avoidance Action

On October 18, 2018, the Trustee commenced an action to avoid the post-petition transfer of the Property from the Debtor to Victor Marquez and David Marquez. On January 17, 2019, the Court entered default judgment and avoided the transfer. Adv. Doc. No. 23 (the “Marquez Judgment”). Among other things, the Court ordered that the Grant Deed transferring the Property from the Debtor to Victor and David Marquez (the “Marquez Grant Deed”) “is automatically preserved for the benefit of the estate pursuant to 11 U.S.C. § 551 ahead of the Debtor’s claimed homestead exemption.” Marquez Judgment at 2.

C. Summary of Papers Filed in Connection with the Second Abandonment Motion

By the Second Abandonment Motion, the Debtor seeks an order compelling the Trustee to abandon the Property. The Trustee opposes the Motion. The Debtor and the Trustee dispute whether there is any equity in the Property to be administered for the benefit of creditors.

The gravamen of the dispute is whether the Property is encumbered by a Deed of Trust in favor of Victor Marquez (the “Marquez Deed of Trust”). The Marquez Deed of Trust is different from the Marquez Grant Deed avoided by the Trustee. According to the Debtor, the Marquez Deed of Trust was recorded on October 22, 2015, for the purpose of securing a \$250,000 loan that Victor Marquez made to the Debtor on October 15, 2015. A copy of the Marquez Deed of Trust is attached as an exhibit to the Second Abandonment Motion. Doc. No. 128 at Ex. 4.

The Trustee disputes the existence of the Marquez Deed of Trust. The Trustee points to a title report, prepared by Priority Title, which did not identify the Marquez Deed of Trust as an encumbrance against the Property.

The Court conducted an initial hearing on the Motion on January 23, 2019. The Court advised the parties that it was prepared to grant the Motion upon a ground not raised in the papers. The Court stated:

Assuming without deciding that the Marquez Deed of Trust was recorded against the Property on October 22, 2015, the Court is prepared to find that as

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a result of subsequent events, the Marquez Deed of Trust no longer encumbers the Property. The reason is that on September 13, 2017, the Debtor transferred the Property to Victor and David Marquez by way of the Marquez Grant Deed. Under the doctrine of merger, whenever the same person holds a greater and lesser estate in the same parcel of real property, the lesser estate merges into the greater and is extinguished. *Kolodge v. Boyd*, 88 Cal. App. 4th 349 (2001). Subsequent to the transfer effectuated by the Marquez Grant Deed, Victor Marquez obtained a fee simple interest in the Property (with David Marquez holding an interest as a joint tenant). Victor Marquez's lesser interest (the security interest established by the Marquez Deed of Trust) merged with his greater interest (the fee simple interest resulting from the Marquez Grant Deed), and the lesser interest ceased to exist. Consequently, when the Trustee subsequently avoided the transfer effectuated by the Marquez Grant Deed, the Property was no longer encumbered by the Marquez Deed of Trust, which had been extinguished under the doctrine of merger.

Ruling Issued January 23, 2019 [Doc. No. 138] at 4.

The Court set this continued hearing to provide the parties an opportunity to respond to the Court's preliminary findings regarding the effect of the merger doctrine on the Marquez Deed of Trust.

The Debtors and Victor Marquez argue that the merger doctrine does not apply for the following reasons:

- 1) The doctrine of merger applies only when the entire title, both legal and equitable, unite in the same person. "A merger occurs when a greater and lesser estate are held by the same person. In order to effect an extinguishment by merger, the title and ownership held in both tenements must be coextensive and equal in validity, quality, right to possession, and all other characteristics. The easement is not extinguished if the person has unequal title or rights in the servient and dominant tenements." *Beyer v. Tahoe Sands Resort*, 129 Cal. App. 4th 1458, 1474, 29 Cal. Rptr. 3d 561, 572-73 (2005).
- 2) The merger doctrine does not apply to the present case because the Marquez Grant Deed conveyed title to Victor Marquez and David Marquez as joint tenants. In contrast, Victor Marquez was the sole beneficiary under the Marquez Deed of Trust. Because Victor Marquez had unequal title in the servient and dominant tenements, merger is not applicable.

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The Trustee contends that merger is applicable based on the Court's preliminary findings.

II. Findings and Conclusions

"A merger occurs when a greater and lesser estate are held by the same person. In order to effect an extinguishment by merger, the title and ownership held in both tenements must be coextensive and equal in validity, quality, right to possession, and all other characteristics. The easement is not extinguished if the person has unequal title or rights in the servient and dominant tenements." *Beyer v. Tahoe Sands Resort*, 129 Cal. App. 4th 1458, 1474, 29 Cal. Rptr. 3d 561, 572–73 (2005).

On October 22, 2015, the Marquez Deed of Trust, in favor of Victor Marquez, was recorded against the Property. The Marquez Grant Deed—which the Trustee subsequently avoided—vested title to the Property in both David Marquez and Victor Marquez. Because Victor Marquez was the sole beneficiary under the Marquez Deed of Trust, but held only a joint tenancy interest in the Property under the Marquez Grant Deed, the Court finds that the doctrine of merger is inapplicable.

The Trustee questions whether the Marquez Deed of Trust is a valid encumbrance against the Property. The Trustee points out that his Preliminary Title Report did not reflect the Marquez Deed of Trust. The absence of the Marquez Deed of Trust from the Trustee's Preliminary Title Report does not show that the Marquez Deed of Trust is not a valid encumbrance. The Debtors have submitted authenticated copies of the Marquez Deed of Trust as well as copies of title reports which list the debt. See Declaration of Andrea Castro (D.E. 135) and Declaration of Philip E. Kobel (D.E. 136). Based upon these, the Court finds that the Marquez Deed of Trust exists and has not been satisfied.

The Property is encumbered by a First Deed of Trust in favor of Wells Fargo Home Mortgage in the approximate amount of \$676,157.65. The original indebtedness secured by the Marquez Deed of Trust was \$250,000. Debtors assert that current indebtedness under the Marquez Deed of Trust is \$852,140.63. The Debtor asserts that the Property is worth \$930,000; the Trustee contends that the Property is worth in excess of \$989,000.

The Court concludes that regardless of whether the Property is worth \$930,000 or \$989,000, there is no equity in the Property for the Trustee to administer for the benefit of creditors. The indebtedness secured by the First Deed of Trust in favor of Wells Fargo and the Marquez Deed of Trust exceeds \$1.5 million. Section 554(b) provides that upon motion, the Court may order the Trustee to "abandon any property

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of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” Because there is no equity in the Property, the Debtor’s motion to compel the Trustee to abandon the Property is GRANTED.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

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

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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2:17-13256 Felicidad Ferrer

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Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#12.00 HearingRE: [54] Motion Notice of Motion and Motion to Compel Defendants' Responses to Discovery Requests and Request for Sanctions; Memorandum of Points and Authorities; Declaration of Hamid R. Rafatjoo in Support Thereof

Docket 54

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Motion—which seeks to compel discovery responses—is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Compel Defendants' Responses to Discovery Requests and Request for Sanctions [Doc. No. 54] (the "Motion")
- 2) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

Prema Thekkek and Antony Thekkek ("Plaintiffs") move to compel Felicidad Ferrer and Renato Ferrer ("Defendants") to respond to discovery requests, pursuant to Civil Rule 37. No Opposition to the Motion is on file. Plaintiffs make the following arguments and representations in support of the Motion:

Plaintiffs served a First Set of Requests for Production of Documents on Defendants on November 12, 2018. Plaintiffs served a First Set of Interrogatories on Defendants on December 13, 2018. Defendants have not responded to either of the discovery requests. Plaintiffs' attempts to meet and confer with Defendants' counsel was not successful.

Pursuant to Civil Rule 37, Defendants should be compelled to respond to Plaintiffs' discovery requests. Defendants should be sanctioned for their failure to fulfill their discovery obligations.

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II. Findings and Conclusions

Civil Rule 37(a)(1) provides: "On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Production of documents may be compelled if "a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34." Civil Rule 37(a)(3)(B)(iv).

Here, Defendants have failed to timely respond to Plaintiffs' discovery requests. The Court **ORDERS** Defendants to respond to discovery by no later than **February 20, 2019**.

Civil Rule 37(a)(5)(A) provides that where a motion to compel discovery is granted, the "court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." However, if any of the following three circumstances apply, the Court must not order the payment of expenses:

- i. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- ii. The opposing party's nondisclosure, response, or objection was substantially justified; or
- iii. Other circumstances make an award of expenses unjust.

Civil Rule 37(a)(5)(A)(i)–(iii).

Here, Plaintiffs attempted in good-faith to meet and confer with Defendants prior to filing the Motion. There is nothing in the record to indicate that Defendants' failure to fulfill their discovery obligations was substantially justified. There are no other circumstances which make an award of expenses unjust. Defendants are ordered to pay the attorneys' fees incurred by Plaintiffs in bringing this Motion.

Within ten days of the hearing, Plaintiff shall file and serve declaration setting forth the fees and costs incurred in bringing the Motion (the "Fee Declaration"). Defendants may respond to the Fee Declaration within ten days, after which the matter with respect to attorneys' fees only will be taken under submission.

Plaintiffs shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

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CONT... Felicidad Ferrer

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

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Renato Ferrer

Represented By
Joshua R Engle

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Antony Thekkek

Represented By
Hamid R Rafatjoo

Prema Thekkek

Represented By
Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Represented By
Varand Gourjian

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2:11-60846 Anne Lan Peterson

Chapter 7

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

#100.00 HearingRE: [146] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Counter-Complaint against Counter-Defendant Anne Peterson, Declaration of Ronald Peterson, with Proof of Service

Docket 146

Tentative Ruling:

2/12/2019

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

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Dismiss Counter-Complaint Against Counter-Defendant Anne Peterson [Doc. No. 146] (the "Motion")
- 2) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

On January 22, 2018, the Chapter 7 Trustee (the "Trustee") filed the *Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Violation of Automatic Stay; and (5) For Dissolution of Limited Liability Company* [Adv. Doc. No. 21] (the "Complaint") against Ronald Peterson ("Ronald") [**Note 1**] and two limited liability companies—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Court subsequently entered judgment in favor of the Trustee.

On June 6, 2018, Ronald filed a *Cross-Complaint for (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; [and] (4) Negligence* [Bankr. Doc. No. 64] (the "Purported Cross-Complaint") against the Trustee and the Debtor. On June 27, 2018, the Court dismissed the Purported Cross-Complaint as to the Trustee. Adv. Doc. No. 113. The Purported Cross-Complaint remains pending with respect to the Debtor.

Ronald has retained new counsel and moves to dismiss Purported Cross-

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Complaint as to the Debtor. On January 4, 2019, Ronald commenced a new adversary proceeding against the Debtor, which contains many of the same allegations as the Purported Cross-Complaint. No Opposition to the Motion is on file.

II. Findings and Conclusions

Civil Rule 41(a)(2) provides that after the opposing party files either an answer or a motion for summary judgment, an action may be dismissed at the plaintiff's request "only by court order, on terms that the court considers proper." The Court finds that dismissal of the Purported Cross-Complaint would not prejudice the Debtor/Defendant. In addition, the Court finds that the claims brought by Ronald can be more efficiently adjudicated in the new action that was filed on January 4, 2019.

Based upon the foregoing, the Motion is GRANTED and the Purported Cross-Complaint is dismissed, without prejudice.

Ronald shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1

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

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Ronald Peterson

Represented By
David Brian Lally

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Maitreya, LLC, a Nevada limited

Represented By
David Brian Lally

Maitreya, LLC, an Arizona limited

Represented By
David Brian Lally

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:12-22639 Claire Levine

Chapter 7

#1.00 Hearing

RE: [665] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3800 Wailea Alanui Drive #B101, Kihei, Hawaii 96753 with proof of service. (Yabes, Gilbert)

fr: 1-22-19

Docket 665

Tentative Ruling:

2/15/2019

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

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 665] (the "Motion")
- 2) Opposition to Motion for Relief from Stay of U.S. Bank, N.A. as to Real Property Located at 3800 Wailea Alanui Drive #B-101, Kihei, HI 96753 [Doc. No. 667] (the "Opposition")
 - a) Request for Judicial Notice in Opposition to Motion for Relief from Stay of U.S. Bank, N.A. as to Real Property Located at 3800 Wailea Alanui Drive #B-101, Kihei, HI 96753 [Doc. No. 668]
- 3) Notice of Trustee's Intention to Abandon Real Property of the Estate Pursuant to 11 U.S.C. § 554(a), Fed. Rule Bankr. Proc. 2002(c) and Local Bankruptcy Rule 6007-1 [Doc. No. 669]
- 4) Notice of Withdrawal of Notice of Trustee's Intention to Abandon Real Property of the Estate [Doc. No. 670]
- 5) Order Setting Continued Hearing on U.S. Bank, N.A.'s Motion for Relief from the Automatic Stay [Doc. No. 672] (the "Continuance Order")
- 6) Supplemental Declaration in Support of Motion for Relief from Automatic Stay [Doc. No. 674]
- 7) Supplemental Opposition to Motion for Relief from Stay of U.S. Bank, N.A. as to Real Property Located at 3800 Wailea Alanui Drive #B-101, Kihei, HI 96753

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CONT... Claire Levine
[Doc. No. 675]

Chapter 7

I. Facts and Summary of Pleadings

U.S. Bank National Association, not in its individual capacity but solely as Trustee for the RMAC Trust, Series 2016-CTT ("U.S. Bank") moves for relief from the automatic stay with respect to property located at 3800 Wailea Alunui Drive, #B101, Kihei, Hawaii 96753 (the "Property"). Claire Levine (the "Debtor") and unsecured creditor Peter Rudinkas (collectively, the "Objectors") oppose the Motion.

A. Background

Debtor commenced a voluntary Chapter 11 petition on April 10, 2012. Doc. No. 1. The case was converted to Chapter 7 on July 30, 2012. Doc. No. 78. Prior to conversion, the Hon. Sandra R. Klein presided over the case. Upon conversion to Chapter 7 the case was reassigned to the undersigned Judge.

On October 31, 2012, the Court denied the motion of Capital One, N.A. ("Capital One") for stay-relief with respect to the Property. The denial was as to the bankruptcy estate only and was without prejudice. Doc. No. 129. On February 6, 2014, the Court denied Capital One's renewed motion for stay-relief. Doc. Nos. 270 and 272.

On January 11, 2019, the Chapter 7 Trustee (the "Trustee") filed a notice stating that he intended to abandon the Property. Doc. No. 669 (the "Notice of Abandonment"). On January 14, 2019, the Trustee withdrew the Notice of Abandonment. Doc. No. 670.

An initial hearing on U.S. Bank's Motion was held on January 22, 2019. At that hearing, the Court found that U.S. Bank had failed to establish that it was the real party in interest entitled to enforce the Note or Deed of Trust against the Property. The Court noted that both the Note and Deed of Trust designated Americorp Funding, a Partnership ("Americorp") as the secured lender, and that U.S. Bank had not supplied any documentation establishing that it acquired the Note or Deed of Trust from Americorp.

The Court set this continued hearing to provide U.S. Bank an opportunity to supply documentation establishing its status as the real party in interest. *See* Order Setting Continued Hearing on U.S. Bank, N.A.'s Motion for Relief from the Automatic Stay [Doc. No. 672] (the "Continuance Order"). Among other things, the Continuance Order provided:

The Court finds it important to emphasize that although U.S. Bank has not at

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Claire Levine

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this stage carried its evidentiary burden, the heightened evidentiary standard advocated by the Debtor and unsecured creditor Peter Rudinskas (collectively, the "Objectors") is not appropriate in the context of a lift-stay motion. "Hearings on relief from the automatic stay are ... handled in a summary fashion," *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), and U.S. Bank is required only to show that it has a "colorable claim" against the Property, *Veal v. Am. Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 908 (B.A.P. 9th Cir. 2011). The Objectors' request that the Court conduct an evidentiary hearing at which U.S. Bank is required to produce original copies of the Note and Deed of Trust for inspection is DENIED as unnecessary.

Continuance Order at ¶3.

B. Summary of Papers Filed in Connection with the Motion

U.S. Bank seeks stay-relief pursuant to §§ 362(d)(1) and (d)(2). Based upon a broker's price opinion, U.S. Bank asserts that the Property's value is \$6.1 million. U.S. Bank states that it is owed \$8,356,015.15.

In response to the Continuance Order, U.S. Bank submitted a supplemental declaration from Michael P. Ruiz, an employee of Rushmore Loan Management Services, LLC ("RLMS"), which provides in relevant part:

I have access to and am familiar with RLMS's books and records regarding the Loan, RLMS's servicing records, and copies of the applicable Loan documents. I am familiar with the manner in which RLMS maintains its books and records, including computer records relating to the servicing of the Loan. RLMS's records are made at or near the time of the occurrence of the matters set forth in such records, by an employee or representative with knowledge of the acts or events recorded. Such records are obtained, kept and maintained by RLMS in the regular course of RLMS's business. RLMS relies on such records in the ordinary course of business.

RLMS has the contractual right and responsibility to service the Loan on U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT's behalf.

As the loan servicer, RLMS acts as an agent for U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC

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Trust, Series 2016–CTT and is generally responsible for administration of the Loan until the loan is paid in full, assigned to another creditor, or the servicing rights are transferred. Administering the Loan includes, among other things, sending monthly payments statements, collecting monthly payments, maintaining records of payments and balances, collecting and paying taxes and insurance (and managing escrow and impounding funds), remitting monies to U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016–CTT, following up on loan delinquencies, home loan workouts and home retention programs, and other general customer service functions. Further, in the event of a default under the terms of the Loan, RLMS is authorized by U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016–CTT and under applicable law to enforce the terms of the subject deed of trust.

According to RLMS's books and records, the Loan is evidenced by a promissory note executed by Gerald Goldstein and Claire Levine and dated January 19, 2007, in the original principal amount of \$4,991,000.00 (the "Note"). *See* Exhibit A.

RLMS's records reflect that U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016–CTT holds possession of the original Note. The Note is indorsed and payable in blank. *See* Exhibit A.

The Note is secured by a deed of trust (the "Deed of Trust") relating to real property commonly known as 3800 Wailea Alunui Drive #B101, Kihei, Hawaii 96753. The Deed of Trust reflects that it was duly recorded. *See* Exhibit B.

Copies of the Note and Deed of Trust which are attached hereto as Exhibits A and B, respectively, are true and correct copies of said documents contained in RLMS's business records.

The Deed of Trust was assigned to U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016–CTT. *See* Exhibit C.

Ruiz Decl. at ¶¶ 1–9.

The Objectors contend that U.S. Bank has still not established that it is the real party in interest with standing to enforce the Note and Deed of Trust, for the following

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reasons:

- 1) Although the instant Motion has been filed by U.S. Bank, Capital One remains the party of record in three different proceedings. Capital One is the petitioner in a pending title reformation action filed prepetition in the Hawaii Land Court. Capital One has filed a Proof of Claim in the Debtor's bankruptcy case. All records that the Debtor has received regarding the mortgage have been from Capital One. These facts suggest that Capital One, rather than U.S. Bank, may be the real party in interest.
- 2) Mr. Ruiz's declaration states only that RLMS's business records reflect possession of the Note and Deed of Trust. No declarant with personal knowledge has testified that the Note and Deed of Trust are in U.S. Bank's possession. RMLS's business records are not reliable, because there is no testimony regarding the date and time that the record indicating custody was generated, who entered the record, or whether that entry was based on personal knowledge.
- 3) Exhibit C to Mr. Ruiz's declaration, which purports to reflect assignment of the Deed of Trust to U.S. Bank, is not authenticated and is inadmissible.
- 4) On November 16, 2011, Capital One petitioned the Hawaii Land Court to expunge an assignment of the Note and Deed of Trust recorded on November 24, 2009 (the "Second Assignment"). By seeking to expunge the Second Assignment, Capital One has admitted its inability to foreclose under the Note and Deed of Trust. U.S. Bank, as Capital One's successor-in-interest, should be judicially estopped from asserting that it has the ability to foreclose.

U.S. Bank's Reply to the Opposition is not due until February 15, 2019. The Trustee does not oppose the Motion.

II. Findings and Conclusions

Civil Rule 17(a)(1) provides: "An action must be prosecuted in the name of the real party in interest." "The modern function of the rule ... is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as *res judicata*." *U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1039 (9th Cir. 1986). "Real party in interest doctrine ... ensures that the party bringing the action owns or has rights that can be vindicated by proving the elements of the claim for relief asserted." *Veal v. Am. Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 908 (B.A.P. 9th Cir. 2011).

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Because stay-relief proceedings "are primarily procedural" and do not finally determine a creditor's claim or security, "a party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." *Veal*, 450 B.R. at 914–15; *see also Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are ... handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing").

For purposes of the instant Motion only, U.S. Bank has established that it is the real party in interest entitled to enforce the Note and Deed of Trust. Based upon Mr. Ruiz's declaration, the Court makes the following findings of fact:

- 1) RLMS has the contractual right and responsibility to service the Note and Deed of Trust on behalf of U.S. Bank. As the loan servicer, RLMS has the authority to provide testimony in support of the instant Motion. Ruiz Decl. [Doc. No. 674] at ¶¶ 3–4.
- 2) U.S. Bank holds possession of the Note. *Id.* at ¶ 6.
- 3) Americorp was the original lender under the Note and Deed of Trust. *Id.* at Ex. A, p. 1. On December 16, 2007, Americorp recorded an assignment of the Deed of Trust from Americorp to Mortgage Electronic Registration Systems, Inc. ("MERS"). *Id.* at Ex. A, pp. 39–44. On November 24, 2009, MERS recorded an assignment of the Deed of Trust from MERS to Capital One. *Id.* at Ex. A, pp. 45–47. On October 5, 2018, Roosevelt Management Company recorded an assignment of the Deed of Trust from Capital One to U.S. Bank. *Id.* at Ex. A, pp. 48–51.

Based upon the foregoing findings of fact, the Court finds that U.S. Bank has established a colorable claim to enforce the Note and Deed of Trust. Mr. Ruiz's declaration shows that U.S. Bank holds possession of the Note. The declaration further establishes a chain of title extending from Americorp, the original lender, to U.S. Bank.

The Objectors misapprehend the nature of a lift-stay motion. To show that it is the real party in interest entitled to stay-relief, U.S. Bank need establish only a colorable claim to enforce the Note and Deed of Trust. That is because this lift-stay hearing is not an adjudication of U.S. Bank's ultimate ability to foreclose under the Note and Deed of Trust. That issue will be determined by the Hawaii State Court. U.S. Bank is

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not required to show its ability to enforce the Note and Deed of Trust beyond a metaphysical doubt.

The Objectors assert that Exhibit C, the assignment of the Deed of Trust from Capital One to U.S. Bank, is not authenticated. The Objectors are mistaken. Mr. Ruiz's declaration sufficiently authenticates Exhibit C. Mr. Ruiz testifies that he is familiar with RLMS's books and records, and he describes the contents of Exhibit C. Ruiz Decl. at ¶ 9.

The Objectors take issues with the fact that Mr. Ruiz's declaration is based upon his review of RLMS's business records, rather than personal knowledge of the accuracy of the Note and Deed of Trust. Under Federal Rule of Evidence ("FRE") 803(6), records of a regularly conducted activity are admissible if:

- a) the record was made at or near the time by—or from information transmitted by—someone with knowledge;
- b) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- c) making the record was a regular practice of that activity;
- d) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
- e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Mr. Ruiz's declaration shows that the records submitted by U.S. Bank satisfy all the requirements of FRE 803(6). Specifically, Mr. Ruiz testifies:

I have access to and am familiar with RLMS's books and records regarding the Loan, RLMS's servicing records, and copies of the applicable Loan documents. I am familiar with the manner in which RLMS maintains its books and records, including computer records relating to the servicing of the Loan. RLMS's records are made at or near the time of the occurrence of the matters set forth in such records, by an employee or representative with knowledge of the acts or events recorded. Such records are obtained, kept and maintained by RLMS in the regular course of RLMS's business. RLMS relies on such records in the ordinary course of business.

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Ruiz Decl. at ¶ 1.

The Objectors have not introduced any evidence indicating that RLMS's records, or the circumstances in which those records are prepared, lack trustworthiness. Therefore, the records submitted by U.S. Bank are admissible. There is no merit to the Objectors' contention that an absence of testimony by someone with personal knowledge of the Note and Deed of Trust requires denial of the Motion.

The Objectors maintain that Capital One, which asserted an interest in the Note and Deed of Trust prior to assignment to U.S. Bank, has acknowledged a defect in chain of title in papers filed with the Hawaii Land Court. The Objectors contend that Capital One's alleged admission judicially estops U.S. Bank from asserting that it has the ability to enforce the Note and Deed of Trust. The Objectors are incorrect. The doctrine of judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001). U.S. Bank cannot be judicially estopped as a result of representations made by Capital One, an unrelated party, in a different case.

The Objectors contend that the Motion's allegations of a lack of equity are not supported by competent evidence. The Objectors are judicially estopped from challenging U.S. Bank's position that there is no equity in the Property. The Objectors previously persuaded the Court to approve a Settlement Agreement, followed by an Amended Settlement Agreement, both of which were predicated upon a short sale of the Property. Thus, the Objectors have acknowledged the lack of equity, and they have not demonstrated that the Property has appreciated in value since the time the Amended Settlement Agreement was approved.

The Objectors' question U.S. Bank's status as the real party in interest, pointing to the fact that Capital One has filed a Proof of Claim asserting indebtedness under the Note and is the petitioner in a prepetition action pending the Hawaii Land Court. These facts do not defeat U.S. Bank's status as the real party in interest. The Proof of Claim in question was filed nearly seven years ago, on June 12, 2012, and therefore provides minimal probative value on the question of who is now entitled to enforce the Note and Deed of Trust. The Hawaii Land Court action is even older, having been filed on November 16, 2011.

This bankruptcy petition was commenced on April 10, 2012. The Property has been protected by the automatic stay for almost seven years. U.S. Bank is owed approximately \$8.35 million, and the Property is worth only \$6.1 million, according to the broker's price opinion submitted by U.S. Bank. The Motion is GRANTED

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pursuant to §§ 362(d)(1) and (d)(2), to permit U.S. Bank, its successors, transferees, and assigns, to enforce its remedies with respect to the Property in accordance with applicable law. U.S. Bank may not pursue any deficiency claim against the Debtors or the estate except by filing a proof of claim pursuant to § 501. Because the Motion was opposed, the fourteen day stay provided by Bankruptcy Rule 4001(a)(3) shall remain in effect.

U.S. Bank shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

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2:18-22958 Tahlequah Steel, Inc.

Chapter 7

#2.00 HearingRE: [14] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Worker's Compensation Case .

Docket 14

Tentative Ruling:

2/14/2019

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (Doc. No. 14) (the "R/S Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Tahlequah Steel, Inc. (the "Debtor") filed this voluntary chapter 7 case on November 2, 2018 (the "Petition Date"). Jason M. Rund was appointed and continues to serve as the acting chapter 7 trustee (the "Trustee").

David Livingston ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed with a worker's compensation proceeding (Case No. ADJ9997985) (the "Worker's Comp Proceeding") before the Workers' Compensation Appeals Board of the State of California (the "Appeals Board"). Movant commenced the Worker's Comp Proceeding on May 27, 2015 by filing a claim for worker's compensation benefits arising from an injury Movant allegedly sustained while employed by the Debtor.

Movant states that the Debtor is a self-insured employer and seeks relief from stay to apply for benefits from "Uninsured Employers Fund" because at the time of Movant's alleged injury, the Debtor's insurance premiums had purportedly lapsed. It appears Movant also seeks relief from stay to allow a mandatory settlement

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conference to proceed. Movant asserts that cause exists to grant stay relief because the claims are non-dischargeable, arise under non-bankruptcy law, and can be most expeditiously resolved in the non-bankruptcy forum.

As of the preparation of this tentative ruling, neither the Debtor nor the Trustee have filed oppositions.

II. Findings of Fact and Conclusions of Law

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

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

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

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

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appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, the Court finds that the Worker's Comp Proceeding involves non-bankruptcy law and is within the expertise of the Appeals Board to resolve. Allowing Movant to continue the Worker's Comp Proceeding will best promote the judicial economy by fully resolving Movant's worker's compensation claim that may either support or negate the filing of a proof of claim or adversary complaint in this case.

The Court deems the Trustee's and Debtor's absence of an objection as their consent to the granting of the motion pursuant to Local Bankruptcy Rule 9013-1(h).

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the R/S Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to final judgment in the Worker's Comp Proceeding and/or to pursue benefits from the Uninsured Employers Fund, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§ 523 or 727 (to the extent applicable). This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

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

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Tahlequah Steel, Inc.

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tahlequah Steel, Inc.

Represented By
Steven B Lever

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:18-24733 Dulcinea Dionecea Echegoyen

Chapter 7

#3.00 Hearing

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW X1 xDrive28i Sport Utility 4D . (Skigin, Cheryl)

Docket 9

***** VACATED *** REASON: STIPULATION ENTERED 2-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dulcinea Dionecea Echegoyen

Represented By
Peter M Lively

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-24960 Alberto Herrera and Beatriz Sanchez

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 Toyota Sienna, VIN 5TDXK3DC8CS234080 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

2/14/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtors' Statement of Intention in which the Debtors stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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Chapter 7

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

Party Information

Debtor(s):

Alberto Herrera

Represented By
Jennifer Ann Aragon

Joint Debtor(s):

Beatriz Sanchez

Represented By
Jennifer Ann Aragon

Trustee(s):

John J Menchaca (TR)

Pro Se

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2:19-10314 Gilbert Castellanos and Denise Castellanos

Chapter 7

#5.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Mitsubishi Outlander, VIN JA4AD3A38HZ013373 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

2/14/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtors' Statement of Intention in which the Debtors stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

Party Information

Debtor(s):

Gilbert Castellanos

Represented By
Nancy Korompis

Joint Debtor(s):

Denise Castellanos

Represented By
Nancy Korompis

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:19-10124 William Ulises Valladares

Chapter 7

#6.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Kia Niro, VIN KNDCB3LC2J5143986 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

2/14/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

Party Information

Debtor(s):

William Ulises Valladares

Represented By
Daniel King

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:18-12437 Wardine Bridges

Chapter 7

#7.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 845 E. Avenue K7, Lancaster, CA 93535 . (Rocha, Karel)

Docket 21

Tentative Ruling:

2/14/2019

For the reasons set forth below, the R/S Motion is DENIED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 21] (the "R/S Motion")
2. Chapter 7 Trustee's Opposition to First City Credit Union's Motion for Relief from the Automatic Stay [Doc. No. 23] (the "Opposition")
3. As of the preparation of this tentative ruling, no reply is on file.

I. Facts and Summary of Pleadings

Wardine Bridges (the "Debtor") filed this voluntary chapter 7 case in pro per on March 6, 2018 (the "Petition Date"). Jason M. Rund is the appointed and active chapter 7 trustee (the "Trustee").

First City Credit Union ("Movant") seeks relief from the automatic stay pursuant to section 362(d)(1) with respect to the Debtor's interest in real property located at 845 E. Avenue K7, Lancaster, CA 93535 (the "Property") on the basis that Movant's interest in the Property is not adequately protected because the Debtor has not made 3 monthly mortgage payments totaling \$360.00 and the Property is depreciating. In support of the R/S Motion, Movant states that it holds a secured claim against the Property in the amount of \$9,539.08 but concedes that the fair market value of the Property is \$160,000.

The Trustee filed a timely Opposition to the R/S Motion [Doc. No. 23]. The

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Trustee asserts that Movant is adequately protected by a significant equity cushion. Moreover, the Trustee has a pending motion for turnover of the property so that the Trustee can sell the Property and pay Movant's claim in full. *See* Doc. No. 24.

The Trustee further states that the estate would be harmed if the Court were to grant stay relief because there appears to be approximately \$114,485.92 in available equity, after paying off Movant's claim, applicable costs of sale, and the Debtor's exemption, that can be distributed to creditors. Therefore, the Trustee requests the Court deny the R/S Motion.

As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Based on Movant's figures, the Court finds that Movant is adequately protected by a 92% equity cushion. Therefore, Movant has not established entitlement to relief from stay pursuant to § 362(d)(1).

III. Conclusion

For the reasons set forth above, the R/S Motion is DENIED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Wardine Bridges Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wardine Bridges

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Toan B Chung

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2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

- #1.00 Show Cause Hearing**
RE: [21] Show Cause Why This Action Should Not Be Dismissed For Failure To State A Claim Upon Which Relief Can Be Granted

Docket 1

Tentative Ruling:

2/19/2019

For the reasons set forth below, the Court finds that the Complaint's allegations pertaining to Defendant's representations with respect to her annual income and tax refund fail to state a claim upon which relief can be granted. The Court will dismiss those allegations. Because the Complaint's remaining allegations state a claim, the Court will discharge the Order to Show Cause, and will conduct a Pretrial Conference on **April 16, 2019, at 11:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Order (1) Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to State a Claim Upon Which Relief Can Be Granted and (2) Vacating Trial Set for the Week of January 28, 2019 [Doc. No. 21] (the "Order to Show Cause")
- 2) Plaintiff's Response to Court's [Order to Show Cause] [Doc. No. 27]
- 3) Defendant Christina Maria Uzeta's Reply to Response to LoanMe Inc. to Court's OSC Re Dismissal [Doc. No. 28]
- 4) Plaintiff's Response to Debtor's Reply to Court's [Order to Show Cause] [Doc. No. 29]

I. Facts and Summary of Pleadings

On January 15, 2019, the Court conducted a Pretrial Conference in this action. On January 16, 2019, the Court issued an order requiring the Plaintiff to show cause why this action should not be dismissed for failure to state a claim upon which relief can be granted. Doc. No. 21 (the "Order to Show Cause"). The Order to Show Cause required the Plaintiff to respond to the following *Preliminary Findings and*

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Conclusions:

The Complaint alleges that Defendant made various false representations to Plaintiff to obtain a loan. The alleged misrepresentations were made verbally in a telephone conversation. The parties have stipulated that in applying for the loan, Defendant verbally identified her employer and told Plaintiff that her annual income was \$60,000. The parties dispute whether Defendant verbally represented that she would use a portion of her tax refund to pay down the loan. Plaintiff seeks a judgment that the indebtedness arising in connection with the loan is non-dischargeable pursuant to §523(a)(2)(A).

Section 523(a)(2)(A) excepts from discharge "money property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*" (emphasis added). To except from discharge indebtedness obtained by a false statement respecting a debtor's financial condition, creditors must satisfy the stricter criteria of §523(a)(2)(B). The Supreme Court has explained the structure of § 523(a)(2) as follows:

The text of § 523(a)(2) plainly heightens the bar to discharge when the fraud at issue was effectuated via a "statement respecting the debtor's financial condition." The heightened requirements, moreover, are not a shield for dishonest debtors. Rather, they reflect Congress' effort to balance the potential misuse of such statements by both debtors and creditors. As the Court has explained previously:

"The House Report on the [Bankruptcy Reform Act of 1978] suggests that Congress wanted to moderate the burden on individuals who submitted false financial statements, not because lies about financial *1764 condition are less blameworthy than others, but because the relative equities might be affected by practices of consumer finance companies, which sometimes have encouraged such falsity by their borrowers for the very purpose of insulating their own claims from discharge." *Field v. Mans*, 516 U.S. 59, 76–77, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995).

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Specifically, as detailed in *Field*, the House Report noted that consumer finance companies frequently collected information from loan applicants in ways designed to permit the companies to later use those statements as the basis for an exception to discharge. Commonly, a loan officer would instruct a loan applicant " 'to list only a few or only the most important of his debts' " on a form with too little space to supply a complete list of debts, even though the phrase, " 'I have no other debts,' " would be printed at the bottom of the form or the applicant would be " 'instructed to write the phrase in his own handwriting.' " *Id.*, at 77, n. 13, 116 S.Ct. 437. If the debtor later filed for bankruptcy, the creditor would contend that the debtor had made misrepresentations in his loan application and the creditor would threaten litigation over excepting the debt from discharge. That threat was "often enough to induce the debtor to settle for a reduced sum," even where the merits of the nondischargeability claim were weak. H.R. Rep. No. 95-595, p. 131 (1977).

Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1763-64, 201 L. Ed. 2d 102 (2018).

The Supreme Court has held that "a statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status." *Lamar*, 138 S.Ct. at 1761. Such statements can include statements pertaining to a single asset, because a "single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor's overall financial condition and can help indicate whether a debtor is solvent or insolvent, able to repay a given debt or not." *Id.*

Plaintiff's position is that Defendant obtained the loan by verbally making false statements regarding her income and her intent to pay down a portion of the loan using her tax refund. In the Court's view, the verbal statements made by Defendant qualify as statements respecting Defendant's financial condition, within the meaning of §523(a)(2)(A). Defendant's statement that she earned \$60,000 per year clearly qualifies as a statement respecting her financial condition. Defendant's representation regarding her intent to use her tax refund to pay down the loan likewise qualifies as a statement respecting her

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financial condition. A tax refund is an asset, and the Supreme Court has recently held that statements regarding a single asset qualify as a statement respecting a debtor's financial condition. In *Lamar*, the court held that the Defendant's statement that he was expecting a tax refund of approximately \$100,000, which would have been sufficient to pay his creditor's outstanding legal fees, was a statement respecting his financial condition. *Lamar*, 138 S.Ct. at 1757. Here, Defendant's alleged statement regarding her intent to use her tax refund to pay down the loan is strikingly similar to the statement at issue in *Lamar*.

Indebtedness obtained through use of a false statement respect a debtor's financial condition is dischargeable only under §523(a)(2)(B). The Complaint contains no claim under §523(a)(2)(B). Consequently, the Complaint fails to state a claim upon which relief can be granted.

Order to Show Cause at 3–4.

Summary of Papers Filed in Connection with the Order to Show Cause

In its Response to the Order to Show Cause, Plaintiff does not dispute that statements regarding Defendant's tax refund and annual income qualify as statements respecting Defendant's financial condition, and that accordingly any indebtedness Defendant obtained through such statements is dischargeable only under § 523(a)(2) (B). Plaintiff asserts that the Complaint's remaining allegations are sufficient to state a claim under § 523(a)(2)(A). Those allegations are as follows:

The [Loan] Agreement states at page 1 that the Borrower [Defendant] promises to pay to [Plaintiff] LoanMe the principal and interest due on the loan on the terms stated in the Agreement. By only making the very first payment due on the loan, LoanMe is informed and believes that Defendant had no intent to repay the loan at the time she signed the Agreement and obtained the loan proceeds and that her representation to repay was knowingly false when made. LoanMe is further informed and believes that by only making one payment, Defendant had no intent to repay the loan at the time she signed the Agreement and obtained the loan proceeds.

LoanMe is further informed and believes based on the above facts that at the time Defendant obtained the loan proceeds and made the above representations to LoanMe she had the intent to deceive LoanMe in order to

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obtain the loan proceeds.

LoanMe reasonably relied on Defendant's promise to repay the loan. Plaintiff obtained checking account records from Defendant which led LoanMe to agree to lend funds to Defendant. LoanMe had no reason to believe Defendant would make only one payment on the loan and file for bankruptcy a few months after obtaining the loan proceeds. Had LoanMe known that Defendant would reverse the ACH and make only one payment on the loan, LoanMe would not have loaned the proceeds to Defendant.

LoanMe is further informed and believes and thereon alleges that at the time Defendant obtained the Loan, she knew or should have known she had no ability to repay the Loan and/or was insolvent at the time the Loan was obtained.

Complaint at ¶¶ 14–17.

In Opposition to Plaintiff's Response, Defendant concedes that she made only one payment under the Loan, but argues that this fact does not support a finding that Defendant did not intend to repay the Loan at the time it was made. Defendant further argues that Plaintiff has failed to allege facts sufficient to establish that Plaintiff reasonably relied upon Defendant's promise to repay when extending credit.

In Reply to Defendant's Opposition, Plaintiff contends that Defendant's alleged fraudulent intent may be inferred by circumstantial evidence—specifically, that Defendant made only one payment on the Loan.

II. Findings and Conclusions

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

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the

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reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

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

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

Plaintiff does not dispute the Court's preliminary finding that the Complaint's allegations regarding statements that Defendant made with respect to her annual income and tax refund fail to state a claim under § 523(a)(2)(A). The Court will dismiss the allegations pertaining to Defendant's annual income and tax refund.

The Court finds that the Complaint's remaining allegations are sufficient to state a claim under § 523(a)(2)(A). Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, a creditor must prove that:

- (1) the debtor made the representations;
- (2) that at the time he knew they were false;
- (3) that he made them with the intention and purpose of deceiving the creditor;
- (4) that the creditor relied on such representations; and
- (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010).

Here, the Complaint alleges that Plaintiff extended credit based upon Defendant's promise to repay. The Complaint alleges that Defendant never intended to repay, and that Defendant's fraudulent intent is evidenced by the fact that Defendant made only one payment on the Loan. These allegations state a claim under § 523(a)(2)(A).

The Court will conduct a Pretrial Conference on **April 16, 2019, at 11:00 a.m.**,

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and will try this action during the week of **April 29, 2019**. The exact trial date will be set at the Pretrial Conference. By no later than fourteen days prior to the Pretrial Conference, the parties shall submit an Amended Joint Pretrial Stipulation that reflects the dismissal of the allegations pertaining to Defendant's annual income and tax refund.

III. Conclusion

Based upon the foregoing, the Court finds that the Complaint's allegations pertaining to Defendant's representations with respect to her annual income and tax refund fail to state a claim upon which relief can be granted. The Court will dismiss those allegations. Because the Complaint's remaining allegations state a claim, the Court will discharge the Order to Show Cause, and will conduct a Pretrial Conference on **April 16, 2019, at 11:00 a.m.** The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Represented By
M. Jonathan Hayes

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

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Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:15-27769 Crystal Waterfalls LLC

Chapter 11

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

#2.00 Status Conference

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

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18; 9-11-18; 12-11-18; 1-15-19

Docket 1

Tentative Ruling:

2/19/2019

At the prior Status Conference, held on January 15, 2019, the Court stated that it would dismiss this action once all the conditions set forth in the *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") had been satisfied. The Court fixed January 29, 2019 as the deadline for Defendants Golden Bay LLC and/or Lucy Gao to object to dismissal. Adv. Doc. No. 48.

Golden Bay LLC and Lucy Gao have not timely objected to dismissal. Plaintiff Bradley D. Sharp, Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 for Liberty Asset Management Corporation (the "Plan Administrator") states that all conditions set forth in the Approval Order have been satisfied, except that Crystal Waterfalls, LLC ("Crystal") has not paid UST fees for the third and fourth quarters of 2018 and has not filed its December 2018 Monthly Operating Report.

At a Status Conference conducted on September 11, 2018, the Court noted that Crystal had not yet completed all the actions contemplated by the Approval Order. In its order setting a continued Status Conference for December 11, 2018, the Court stated:

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CONT... Crystal Waterfalls LLC

Chapter 11

Because the ninety-day continuance of the Status Conference provides Crystal more than sufficient time to complete the remaining actions contemplated by the Approval Order, the Court expects that all such remaining actions will have been completed by the date of the continued Status Conference.

See Order Setting Continued Status Conference for December 11, 2018, at 10:00 a.m. [Doc. No. 40] at ¶3.

Crystal is **ORDERED** to bring its UST fees current, and to file all outstanding Monthly Operating Reports, by no later than **February 27, 2019**. The Court will not extend this deadline absent exceptionally compelling circumstances. Crystal has been provided more than sufficient time to complete the tasks set forth in the Approval Order.

Once the conditions set forth in the Approval Order have been satisfied, the Plan Administrator shall submit a stipulation between the Plan Administrator and Crystal, providing for the dismissal of this action, accompanied by a proposed order thereon. A continued Status Conference shall be held on **April 3, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. The Status Conference will go off calendar in the event the action is dismissed.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

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CONT... Crystal Waterfalls LLC

Chapter 11

Golden Bay Investments, LLC Pro Se

Lucy Gao Pro Se

Plaintiff(s):

Liberty Asset Management Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA) Pro Se

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2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#3.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17; 3-13-18; 3-14-18; 6-20-18; 9-12-18; 12-12-18

Docket 14

***** VACATED *** REASON: CONVERTED TO CHAPTER 7 ON 1-10-19**

Tentative Ruling:

12/11/2018

Based upon the Debtor's Status Report filed December 3, 2018, this matter is continued to February 20, 2019 at 10:00 a.m. Debtor shall lodge a stipulation with Citizen's Business Bank and the IRS no later than December 31, 2018 permitting Debtor to use cash collateral on the same terms and conditions as previously order by the Court, through and including February 20, 2019.

Since it appears that no plan will be filed, the Court will likely dismiss or convert the case at the February 20 hearing unless a sale motion has previously been filed.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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10:00 AM

2:18-24291 Apostolic Ark Faith Assembly, Inc.

Chapter 7

#4.00 HearingRE: [25] Motion to Dismiss Debtor with proof of service.

Docket 25

Tentative Ruling:

2/19/2019

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

Pleadings Filed and Reviewed

1. Debtor's Voluntary Motion to Dismiss [Doc. No. 25] (the "Dismissal Motion")
2. Notice of Motion for: Debtor's Voluntary Motion to Dismiss [Doc. No. 26]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Apostolic Ark Faith Assembly, Inc. (the "Debtor") filed this voluntary chapter 7 case on December 7, 2018 (the "Petition Date"). On December 27, 2018, the case was dismissed for failure to file certain case commencement documents [Doc. No. 12]. On January 4, 2019, the Court entered an order granting Debtor's request to vacate the dismissal order and reinstating the case [Doc. No. 16]. On January 14, 2019, the Debtor filed a motion to convert this case to a case under chapter 7 [Doc. No. 18], but subsequently withdrew that motion [Doc. No. 21].

Prior to the Petition Date, the Debtor conducted worship services on the leased premises of 536 S. 2nd Street, Suite I and J, Covina, CA 91723 (the "Lease"). However, on January 17, 2019, the Court entered an order lifting the automatic stay with respect to Warren Plaza, Inc., after determining that the Lease was not property of the bankruptcy estate. *See* Doc. Nos. 20 & 23.

As a result, the Debtor now seeks to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Debtor states that it filed this case in an effort to reinstate its Lease, cure outstanding rent obligations, and reorganize its affairs. However, in light of this Court's order lifting the stay, the Debtor submits that there is no further relief to be

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CONT... **Apostolic Ark Faith Assembly, Inc.**

Chapter 7

obtained by remaining in bankruptcy. The Debtor states that all of its assets were located on the leased premises and that it has very little personal property that can be liquidated to pay creditors. The Debtor further states that it has few creditors and understands that as a non-individual debtor it cannot obtain a discharge.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that Debtor seeks relief under § 1112(b), but that section is inapplicable because this is a chapter 7 case. Accordingly, the Court will treat the Debtor's motion as a request for relief under section 707(a).

Pursuant to section 707(a), "the court may dismiss a case under this chapter only after notice and a hearing and only for cause." The examples listed in § 707(a)(1) – (3) are merely illustrative, and a court may dismiss a petition on other grounds where cause exists. Collier on Bankruptcy, ¶ 707.03[01] (16th 2018); *see also In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000) ("The grounds that § 707(a) lists as providing 'cause' for dismissal are illustrative and not exhaustive"). "In the Ninth Circuit, 'a voluntary Chapter 7 debtor is entitled to dismissal of [its] case so long as such dismissal will cause no 'legal prejudice' to interested parties.'" *In re Bartee*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004) (internal citations omitted). "Debtors bear the burden of proving that dismissal would not prejudice their creditors." *Id.*

In this case, the Debtor submits that it has very little property that could be administered for the benefit of creditors. In support of the motion, the Debtor attached a copy of its Schedule A, which lists personal property totaling only \$3,600.00. None of the Debtor's creditors or the Chapter 7 Trustee have responded to its motion to voluntarily dismiss this case. Therefore, the Court finds that dismissal will no prejudice any interest parties and that "cause" exists to dismiss this case.

III. Conclusion

For the reasons set forth above, the Dismissal Motion is GRANTED.

The Debtor is directed to lodge a conforming proposed order, incorporating this

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CONT... Apostolic Ark Faith Assembly, Inc.

Chapter 7

tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Apostolic Ark Faith Assembly, Inc.

Represented By
R Grace Rodriguez

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-23782 RAYMOND FELDMAN

Chapter 7

#5.00 Hearing
RE: [15] Motion to Avoid Lien with Bosco Credit LLC

Docket 15

***** VACATED *** REASON: CONTINUED 3-20-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

RAYMOND FELDMAN

Represented By
Giovanni Orantes

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:18-20111 Jeremy Wyatt LeClair
Adv#: 2:18-01425 Cortes v. LeClair

Chapter 7

#6.00 Hearing re [10] **Defendant's Motion To Dismiss**

Docket 0

Tentative Ruling:

2/19/2019

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

Pleadings Filed and Reviewed:

- 1) Complaint to Determine Dischargeability of Debt and for Money Judgment [Doc. No. 1] (the "Complaint")
- 2) Defendants' Notice of Motion and Motion to Dismiss Plaintiffs' Complaint [Doc. No. 10] (the "Motion")
- 3) Plaintiff's Opposition to Debtor's Motion to Dismiss Plaintiff's Adversary Action [Doc. No. 11] (the "Opposition")
- 4) Order Setting Hearing on Defendant's Motion to Dismiss [Doc. No. 12]
- 5) Defendants' Response to: Plaintiff's Opposition to Debtor's Motion to Dismiss Plaintiff's Adversary Action [Doc. No. 15]

I. Facts and Summary of Pleadings

On August 30, 2018, the Chapter 7 case of Jeremy Wyatt LeClair was transferred to this district from the Western District of North Carolina. On that same date, the Clerk of the Court issued a *Notice of Chapter 7 Bankruptcy Case* [Bankr. Doc. No. 2] (the "Notice"), which set December 3, 2018 as the deadline to file a dischargeability action.

On November 30, 2018, Alvaro Cortes ("Plaintiff") filed a *Complaint to Determine Dischargeability of Debt and for Money Judgment* [Bankr. Doc. No. 18] (the "Complaint"). As a result of a filing error, the Clerk of the Court (the "Clerk") did not assign the Complaint an adversary case number and did not issue a Summons. On December 3, 2018, Plaintiff attempted to re-file the Complaint, but instead mistakenly filed a document pertaining to an unrelated state court action. In

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connection with the December 3 filing, the Clerk opened Adv. No. 2:18-ap-01423, and instructed Plaintiff to immediately file the correct document.

On December 4, 2018, Plaintiff re-filed the correct version of the Complaint, but mistakenly filed that document in the main bankruptcy case, rather than in Adv. No. 2:18-ap-01423-ER. As a result, the Clerk opened a different adversary file, Adv. No. 2:18-ap-01425-ER, and issued a Summons in that file. The Court subsequently issued an order which closed Adv. No. 2:18-ap-01423-ER and provided that litigation of the Complaint would proceed in Adv. No. 2:18-ap-01425-ER.

Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

Plaintiff commenced an action in the Los Angeles Superior Court against Defendant (the "State Court Action"), which alleged that Defendant fraudulently offered and sold unqualified, non-exempt securities in the form of operating agreements, bridge loans, and promissory notes. The securities were intended to finance entertainment projects. Plaintiff obtained a default judgment in the amount of \$590,908.50 (the "State Court Judgment").

The indebtedness established by the State Court Judgment is non-dischargeable pursuant to § 523(a)(2)(A). Defendant made false representations in connection with the sale of the securities, because Defendant was operating a Ponzi scheme under which previous investors were repaid using newer investors' funds.

Defendant converted certain of the funds raised from the sale of such securities for his own personal use. Consequently, the indebtedness established by the State Court Judgment is non-dischargeable pursuant to § 523(a)(6).

Within one year prior to the filing of the petition, Defendant transferred substantial assets to others for the purpose of hindering, delaying, and defrauding creditors. As a result, Defendant's discharge should be denied pursuant to § 727(a)(2)(A).

Summary of Papers Filed in Connection with the Motion to Dismiss

On January 22, 2019, Defendant, proceeding *pro se*, filed an Answer to the Complaint and a *Motion to Dismiss* [Adv. Doc. No. 10] (the "Motion"). Both the Answer and the Motion assert that the Complaint is time-barred because it was filed on December 4, 2018—one day subsequent to the December 3, 2018 deadline. The Motion further asserts that the Complaint fails to state a claim under § 523(a)(6), for

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the following reasons:

- 1) The State Court Action was never served upon Defendant.
- 2) The State of California investigated the alleged Ponzi scheme and did not charge Defendant with any wrong-doing.
- 3) Defendant did not receive or take money from Plaintiff.
- 4) Rather than being the perpetrator of the alleged Ponzi scheme, Defendant was himself the victim of the fraudulent conduct of Dror Soref.
- 5) Defendant did not solicit Plaintiff by means of promotional materials as alleged in the Complaint.

In Opposition to the Motion, Plaintiff argues that the Complaint was not filed on December 4, 2018, but was instead re-filed on that day in response to the Clerk's instructions. Plaintiff disputes Defendant's contention that the Complaint fails to state a claim under § 523(a)(6). According to Plaintiff, Defendant's arguments are an attempt to challenge facts established by the State Court Judgment. Plaintiff asserts that Defendant is collaterally estopped from presenting such a challenge.

In Reply, Defendant reiterates that the Complaint was not filed until December 4, 2018. Defendant contends that the Clerk did not accept the filings on November 30, 2018 and December 3, 2018. Based on this premise, Defendant maintains that the Complaint was not accepted for filing until December 4, 2018.

II. Findings and Conclusions

Before turning to the merits, the Court must first address a procedural irregularity. Defendant filed the Motion at the same time he filed an Answer. A motion brought under Civil Rule 12(b)(6) must be made before pleading. Where a Rule 12(b)(6) motion is brought after pleading, it is treated as a motion for judgment on the pleadings, pursuant to Civil Rule 12(c). *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 954 (9th Cir. 2004). The Court will construe the Motion as having been brought under Civil Rule 12(c).

The Complaint Was Filed Timely

Turning to the merits, Bankruptcy Rule 4007(c) provides: "[A] complaint to determine the dischargeability of a debt under § 523(c) shall be filed by no later than 60 days after the first date set for the meeting of creditors under § 341(a)." The 60-day deadline is strictly enforced:

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“Ninth Circuit law ... strictly construes Rule 4007(c)” and courts “cannot extend [its] time limit implicitly” where no such motion is made. *Allred v. Kennerley (In re Kennerley)*, 995 F.2d 145, 147 (9th Cir.1993); *see also Anwar v. Johnson*, 720 F.3d 1183, 1187, No. 11–16612, slip op. at 9, 2013 WL 3306327 (9th Cir. July 2, 2013) (“[W]e have repeatedly held that the sixty-day time, limit for filing nondischargeability complaints under 11 U.S.C. § 523(c) is strict and, without qualification, cannot be extended unless a motion is made before the 60–day limit expires.” (internal quotation marks omitted)); *Anwiler v. Patchett (In re Anwiler)*, 958 F.2d 925, 927 (9th Cir.1992) (“[A] court no longer has the discretion to set the deadline, nor can it sua sponte extend the time to file....”); *cf. Kontrick v. Ryan*, 540 U.S. 443, 448 n. 3, 456, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) (characterizing Rule 4004’s time prescription, which is “essentially the same” as that in Rule 4007, as “an inflexible claim-processing rule” that is “unalterable on a party’s application”). Strict construction of Rule 4007(c) is necessary due to “the need for certainty in determining which claims are and are not discharged.” *Kennerley*, 995 F.2d at 148. Accordingly, we held in *Kennerley* that a complaint to determine dischargeability was untimely because “there was no clear indication in the record at the expiration of Rule 4007(c)’s 60–day period for filing complaints ... that th[e] debt [at issue] was not to be discharged along with all others.” *Id.*

Willms v. Sanderson, 723 F.3d 1094, 1100 (9th Cir. 2013).

Here, Plaintiff filed the Complaint on November 30, 2018, prior to the December 3, 2018 deadline. As a result of filing errors, the Clerk required Plaintiff to re-file the Complaint twice, and did not issue a Summons until December 4, 2018. For purposes of Bankruptcy Rule 4007(c), the initial date upon which the Complaint is filed is controlling. The fact that the Clerk directed Plaintiff to re-file the Complaint does not change the reality that the Complaint was filed timely. There is no merit to Defendant’s assertion that the Complaint must be dismissed as untimely.

The Complaint States a Claim for Relief Under § 523(a)(6)

Civil Rule 12(c) is functionally identical to Rule 12(b)(6), and the same standard of review applies to motions brought under either rule. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n. 4 (9th Cir. 2011).

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Under Civil Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

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

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

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

In the Motion, Defendant does not attempt to show that the Complaint fails to allege sufficient facts in support of the relief sought. Instead, Defendant disputes the truth of the facts alleged in the Complaint. Defendant misapprehends the purpose of a motion brought under Civil Rule 12(b)(6). A Rule 12(b)(6) motion tests whether the Complaint alleges a plausible claim for relief; it does not test whether the Complaint's allegations are true.

The Complaint sufficiently states a claim under § 523(a)(6). "Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

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An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

Here, the Complaint alleges that Defendant committed willful and malicious injury to Plaintiff's property by converting such property in connection with the operation of a Ponzi scheme. The facts alleged in the Complaint are sufficient to state a claim under § 523(a)(6).

In Opposition to the Motion, Plaintiff asserts that Defendant is collaterally estopped from challenging facts established by the State Court Judgment. Within the context of the instant Motion, it is not necessary for the Court to decide the extent to which the State Court Judgment precludes Defendant from contesting his liability in this action.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. Plaintiff shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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Chapter 7

Debtor(s):

Jeremy Wyatt LeClair Pro Se

Defendant(s):

Jeremy Wyatt LeClair Pro Se

Plaintiff(s):

Alvaro Cortes Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR) Pro Se

**United States Bankruptcy Court
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10:00 AM

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

Chapter 11

#7.00 Show Cause Hearing RE: [1431] Notice to creditors (BNC-PDF) re 1430 Order Requiring Weiland Golden Goodrich LLP To Show Cause Why Its Contingency Fee Should Not Be Reduced From 33 1/3% TO 25% Of Net Recoveries. (Lomeli, Lydia R.)

Docket 1431

Tentative Ruling:

2/19/2019

Hearing required.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

**United States Bankruptcy Court
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Wednesday, February 20, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medi-Cal Provider Agreements

fr. 1-30-19; 2-6-19; 2-13-19

Docket 0

Tentative Ruling:

2/19/2019

The Court has entered an order approving a stipulated continuance of this hearing to **February 27, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1545 Calendar**

Wednesday, February 20, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medicare Provider Agreements

fr. 1-30-19; 2-6-19; 2-13-19

Docket 0

Tentative Ruling:

2/19/2019

The Court has entered an order approving a stipulated continuance of this hearing to **February 27, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
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Wednesday, February 20, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1153] Cure objections

fr. 1-30-19; 2-6-19; 2-13-19

Docket 0

Tentative Ruling:

2/19/2019

Hearing continued. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
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Wednesday, February 20, 2019

Hearing Room 1568

11:00 AM

2:11-58222 Peli Popovich Hunt and Peli Popovich Hunt

Chapter 7

#100.00 Hearing
RE: [562] Motion Chapter 7 Trustee's Motion for Order Approving and Authorizing Stipulation Between Elissa D. Miller, Chapter 7 Trustee for the Estate of Peli Popovich Hunt, and David M. Goodrich, Chapter 7 Trustee for the Estate of Robert W. Hunt, M.D. a Medical Corporation, for Allowance of Administrative Expense Claims and Withdrawal and Disallowance of General Unsecured Claims; Memorandum of Points and Authorities; Declaration of Elissa D. Miller in Support Thereof (Lev, Daniel)

Docket 562

*** VACATED *** REASON: PER ORDER ENTERED 2-19-19

Tentative Ruling:

2/19/2019

This hearing is VACATED. The Court has entered a Memorandum of Decision and corresponding Order granting the Motion.

Party Information

Debtor(s):

Peli Popovich Hunt

Represented By
Steven E Wohn

Peli Popovich Hunt

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Elissa Miller (TR)
Jason Balitzer
David J Richardson

**United States Bankruptcy Court
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Monday, February 25, 2019

Hearing Room 1568

9:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

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

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 10-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Monday, February 25, 2019

Hearing Room 1568

9:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

Docket 1

***** VACATED *** REASON: CONTINUED 6-25-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon	Pro Se
BJ Mobile, Inc., a California	Pro Se
JETWORLD, Inc., a California	Pro Se
JW Wireless OKC, an Oklahoma	Pro Se
JWK Management, Inc., a California	Pro Se

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9:00 AM

CONT... JW Wireless Inc. Chapter 7

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his
Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)
Represented By
Robert P Goe

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Monday, February 25, 2019

Hearing Room 1568

9:00 AM

2:17-25586 Soheil Khanian

Chapter 7

Adv#: 2:18-01080 Khankhanian v. Khanian

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01080. Complaint by Bahram Khankhanian against Soheil Khanian . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr: 1-28-19

Docket 1

Tentative Ruling:

2/21/2019

Appearances required.

Party Information

Debtor(s):

Soheil Khanian

Represented By
Mitchell R Sussman

Defendant(s):

Soheil Khanian

Pro Se

Plaintiff(s):

Bahram Khankhanian

Represented By
Dean P Sperling

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Hearing Room 1568

9:00 AM

2:17-25674 John E Bennett

Chapter 7

Adv#: 2:18-01089 First National Bank Of Omaha v. Bennett

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01089. Complaint by First National Bank Of Omaha against John Bennett. false pretenses, false representation, actual fraud)) (Rooney, Cory)

Docket 1

*** VACATED *** REASON: DISMISSED ON 5-8-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Bennett

Represented By
David R Hagen

Defendant(s):

John Bennett

Pro Se

Joint Debtor(s):

Deborah Bennett

Represented By
David R Hagen

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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Monday, February 25, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

***** VACATED *** REASON: CONTINUED 3-25-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Monday, February 25, 2019

Hearing Room 1568

9:00 AM

2:18-11170 Min Young Kim

Chapter 7

Adv#: 2:18-01132 Daimler Trust v. Kim

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01132. Complaint by Daimler Trust against Min Young Kim. false pretenses, false representation, actual fraud)) (Mroczynski, Randall)

Docket 1

***** VACATED *** REASON: DISMISSED 9-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Min Young Kim

Represented By
Kelly K Chang

Defendant(s):

Min Young Kim

Pro Se

Plaintiff(s):

Daimler Trust

Represented By
Randall P Mroczynski

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Hearing Room 1568

9:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 11-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01095 Official Committee of Unsecured Creditors of Garde v. Blue Cross Blue

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01095. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Blue Cross Blue Shield of Michigan, Inc.. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

***** VACATED *** REASON: DISMISSED 2-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Blue Cross Blue Shield of Michigan,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

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Hearing Room 1568

9:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

Adv#: 2:18-01091 Beach Dans, Inc. v. United Community Bank et al

#9.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01091. Complaint by Beach Dans, Inc. against United Community Bank. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)) (Goe, Robert)

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

United Community Bank

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Stephen Reider

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Monday, February 25, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#100.00 HearingRE: [7] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Chady v. Zendedel, Los Angeles Superior Court No. BC640410.

Docket 7

Tentative Ruling:

2/21/2019

For the reasons set forth below, the R/S Motion and Malicious Prosecution R/S Motion are GRANTED.

Pleadings Filed and Reviewed

The State Court Action:

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 7] (the "R/S Motion")
2. Debtor's Opposition to Cyrus Chady's Motion for Relief from the Automatic Stay [Doc. No. 33] (the "Opposition")
3. Reply of Creditor Chady to Opposition of Debtor to Motion for Relief from the Automatic Stay (as to Nonbankruptcy Action Chady v. Zendedel, BC640410) [Doc. No. 35] (the "Reply")

The Malicious Prosecution Action:

4. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 9] (the "Malicious Prosecution R/S Motion")
5. Debtor's Opposition to Cyrus Chady's Motion for Relief from the Automatic Stay [Doc. No. 34] (the "Malicious Prosecution Opposition")
6. Reply of Creditor Chady to Opposition of Debtor to Motion for Relief from the Automatic Stay (as to Nonbankruptcy Action Chady v. Shamekh, BC714462) [Doc. No. 36] (the "Malicious Prosecution Reply")

I. Facts and Summary of Pleadings

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, February 25, 2019

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Bahram Zendedel (the "Debtor") filed this voluntary chapter 7 case on January 18, 2019 (the "Petition Date"). Shortly thereafter, Peter J. Mastan was appointed to serve as the chapter 7 trustee and continues to serve in that capacity (the "Trustee").

Creditor Cyrus Chady ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed under applicable non-bankruptcy law to final judgment with two related actions pending before the Los Angeles Superior Court (the "State Court"): (1) *Chady v. Zendedel et al.*, (Case No. BC640410) (the "State Court Action"); and (2) *Chady v. Shamekh et al.*, (Case No. BC714462) (the "Malicious Prosecution Action," and together with the State Court Action, the "State Court Actions"). Movant also contends that mandatory abstention applies pursuant to 28 U.S.C. § 1334(c)(2).

Movant initiated the State Court Action on November 10, 2016, by filing a complaint against the Debtor and other non-debtor defendants for: (1) fraud, (2) negligent misrepresentation, (3) conversion, (4) breach of contract, (5) money lent, (6) money paid, (7) money had and received, and (8) dependent adult abuse (the "Complaint"). Movant states that a 5-day jury trial was scheduled to begin on February 13, 2019, and that the State Court previously imposed discovery sanctions against the Debtor prohibiting him from presenting evidence at trial in opposition to certain of Movant's claims. *See* Ex. 2. Therefore, Movant contends that Debtor's bankruptcy filing was in bad faith and intended to delay or interfere with the trial.

Movant initiated the Malicious Prosecution Action on July 17, 2018, by filing a complaint against the Debtor and other non-debtor defendants for malicious prosecution (the "Malicious Prosecution Complaint"). Movant states that a 7-10 day trial is scheduled to begin on December 9, 2019, and that the Malicious Prosecution Action is related to the State Court Action.

As to both the R/S Motion and the Malicious Prosecution R/S Motion (together the "R/S Motions"), Movant asserts that cause exists to grant him stay relief pursuant to § 362(d)(1) because: (i) mandatory abstention applies under 28 U.S.C. § 1334(c)(2); and (ii) the claims asserted in the Complaint and Malicious Prosecution Complaint are nondischargeable and arise under nonbankruptcy law and can be most expeditiously resolved in State Court.

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Summary of Debtor's Oppositions

Debtor timely opposed the R/S Motions [Doc. Nos. 33 & 34] (the "Oppositions"). [Note 1] Debtor advances largely the same arguments in both oppositions. A summary of those arguments is set forth below.

Debtor states that he is the 100% owner of shares of non-debtor LA Girl Jewelry, Inc. ("LAG"), a co-defendant in both of the State Court Actions. Debtor also states that pre-petition, the Debtor and LAG were named as defendants in several other lawsuits that are currently pending in California state courts. Debtor makes the following arguments with respect to the 12 *Plumberex* factors:

a. Whether the relief will result in a complete or only a partial resolution of the issues.

State Court Action: The State Court Action involves a claim for fraud and Movant contends that his debt is nondischargeable. If there is a judgment entered against the Debtor for fraud, the parties may have to retry certain issues before this court to determine whether the judgment is dischargeable. Therefore, lifting the stay will only result in partial relief.

Malicious Prosecution Action: The malicious prosecution claim appears to be a dischargeable debt.

b. The degree of connection or interference with the bankruptcy case. n/a

c. Whether the case involves the debtor as a fiduciary. The Debtor is a fiduciary of co-defendant LAG.

d. Whether the case is before a specialized tribunal with necessary expertise to determine the issues. The State Court is not a specialized tribunal and the claims asserted in the State Court Actions are not matters that involve unsettled questions of state law.

e. Whether the debtor's defense and potential liability is covered by insurance.
n/a

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f. Whether the action involves primarily third parties. The State Court Actions both involve third parties, including LAG. [Note 2]

g. Whether the case would prejudice other creditors' interests. n/a

h. Whether a resulting judgment would be subject to equitable subordination. n/a

i. Whether a resulting judgment would result in a judicial lien avoidable by the debtor under 11 U.S.C. § 522(f). n/a

j. The interests of judicial economy and the expeditious and economical resolution of litigation.

State Court Action: Movant may obtain a judgment on his fraud claim which would require new litigation in this court. This would not promote judicial economy and instead will require all parties to expend additional resources.

Malicious Prosecution Action: n/a

k. Whether the parties are ready for trial.

State Court Action: As a result of Debtor's bankruptcy filing, the State Court has vacated the February 13, 2019 trial date and continued trial to July 17, 2019.

Malicious Prosecution Action: Trial is not scheduled until December 9, 2019. There is no issue of readiness before this court that is grounds for cause for the stay to be lifted.

l. The impact of the stay on the parties and the balance of harms.

State Court Action: The Debtor will be harmed by having to expend additional resources defending himself in the State Court Action. Since the State Court continued the February 13, 2019 trial date, there is no urgency to lifting the stay. The Debtor should be permitted the opportunity of a breathing spell.

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Malicious Prosecution Action: The Debtor will be harmed by having to expend additional resources defending himself in the Malicious Prosecution Action. Since the trial is not set to take place until December 9, 2019, there is no urgency to lifting the stay.

Debtor further argues that Movant has failed to establish that this case was filed in bad faith with respect to the State Court Action. Although this case was filed only one month prior to the start of trial in the State Court Action, the Debtor states that he did not file this case simply to delay the action from proceeding to trial. Rather, as Debtor's schedules and statement of financial affairs establish, the Debtor sought bankruptcy protection to get a breathing spell from nine different lawsuits.

Summary of Movant's Replies

Movant filed timely replies [Doc. Nos. 35 & 36] in response to the Oppositions (the "Replies"). First, Movant contends that mandatory abstention applies because Movant's claims are purely state law claims that could not have been commenced in this Court and the claims can be timely adjudicated in state court.

Next, Movant argues in the alternative that he has made a prima facie case for stay relief and the Debtor has not demonstrated that stay relief is unwarranted. Movant contends that the Debtor misstates some of the twelve *Plumberex* factors.

State Court Action: Movant also argues that the Debtor fails to demonstrate how piece-meal litigation of Movant's fraud-related claims against non-debtor defendants and the same claims against the Debtor in a nondischargeability action promotes judicial economy. Movant highlights that the Debtor could be estopped from challenging the state court's findings, which would make any litigation in this Court regarding the issue of nondischargeability much more expeditious and notes that the Debtor mischaracterizes the actions of the State Court with respect to the continued trial date. Movant argues that Debtor is improperly trying to forum shop and to deprive him of his right to a jury trial.

With respect to Movant's assertion that this case was filed in bad faith to delay the State Court Action from proceeding to trial, Movant again highlights that the State Court had imposed discovery sanctions that prohibited the Debtor from presenting

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evidence. Accordingly, the Debtor was facing imminent defeat in the State Court Action, which likely prompted the Debtor to file this case in an effort to forum shop.

Malicious Prosecution Action: Movant argues that the Debtor has failed to establish how judicial economy would not be best served by permitting the Malicious Prosecution Action from moving forward because it involves several non-debtor defendants and because the State Court is already familiar with the facts of the case and the parties' disputes. Movant also contends that the Debtor's arguments in support of several of the factors are based upon unsupported speculation and that the Debtor fails to advance a sufficient basis to show how he would be prejudiced.

As of the preparation of this tentative ruling, the Trustee has not filed a response to the R/S Motions.

II. Findings of Fact and Conclusions of Law

Mandatory Abstention Applies

Upon timely motion, a bankruptcy court **must** abstain from a proceeding "based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section ... if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction." 28 U.S.C. § 1334(c)(2).

Mandatory abstention under § 1334 applies to proceedings commenced in state court and requires **all** of the following elements:

1. the abstention motion is timely;
2. the proceeding involves a purely state law question;
3. the proceeding is noncore and merely "related to" the bankruptcy case;
4. no independent federal jurisdiction exists for the proceeding absent filing of the bankruptcy petition;
5. an action was commenced in state court;
6. the proceeding can be timely adjudicated in state court; and
7. jurisdiction is appropriate in state court.

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In re Lazar, 200 B.R. 358, 370 (Bankr. C.D. Cal. 1996).

In this case, the Court finds that all seven factors are met with respect to both the State Court Action and the Malicious Prosecution Action.

State Court Action: Movant timely filed the R/S Motion on January 22, 2019, just four days after the Debtor's bankruptcy filing. The State Court Action involves claims for fraud, negligent misrepresentation, conversion, breach of contract, money lent, money paid, money had and received, and dependent adult abuse – all of which appear from this record to be entirely state law claims, are noncore and merely "related to" this case. It does not appear that a federal court could have jurisdiction over the claims absent this bankruptcy filing because there is no federal question involved and no diversity jurisdiction. The State Court Action was commenced pre-petition. The State Court could timely adjudicate the claims – and in fact was prepared to commence trial on February 13, 2019 if it had not been for the Debtor's bankruptcy filing. The State Court has jurisdiction to decide the claims and the Debtor has not contested the State Court's jurisdiction over the proceeding.

Malicious Prosecution Action: Movant timely filed the Malicious Prosecution R/S Motion on January 22, 2019, just four days after the Debtor's bankruptcy filing. The Malicious Prosecution Action involves a claim for malicious prosecution – which appears from this record to involve a purely state law question and is noncore and merely "related to" this case. It does not appear that a federal court could have jurisdiction over the claim absent this bankruptcy filing because there is no federal question involved and no diversity jurisdiction. The Malicious Prosecution Action was commenced pre-petition. The State Court could timely adjudicate the claim. The State Court has jurisdiction to decide the claim and the Debtor has not contested the State Court's jurisdiction over the proceeding.

The Debtor has not presented any arguments or evidence to controvert these findings. Therefore, for the reasons stated above, the Court finds that mandatory abstention applies, and Movant is entitled to orders lifting the stay to allow the State Court Action and Malicious Prosecution Action to proceed in the State Court.

Stay Relief is Appropriate Pursuant to § 362(d)(1)

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As an alternative basis for lifting the stay, the Court finds that Movant is entitled to stay relief pursuant to § 362(d)(1).

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause" 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;

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8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt[.]"

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

The Court finds that Movant has established a prima facie case that "cause" exists to grant relief from stay under section 362(d)(1). Granting relief from stay with respect to both the State Court Action and the Malicious Prosecution Action will best promote interests of judicial economy because the litigation involves several non-debtor defendants. Granting stay relief will allow the State Court Action and Malicious Prosecution Action to proceed towards resolution in a timely fashion and will avoid costly piece-meal litigation. Furthermore, the Debtor has not shown that the actions could proceed without him or that litigation in the State Court would be any less costly than the litigation expenses the Debtor would incur if some or all of Movant's claims against him were adjudicated in this Court. Additionally, since this is a case under chapter 7, no reorganization is in prospect and the Debtor has not shown that granting stay relief will prejudice the interests of the Debtor's other creditors. The Court also notes that the Chapter 7 Trustee has not opposed Movant's requests for stay relief.

While the State Court is not a specialized tribunal established specifically to hear the claims asserted in the underlying complaints, the claims arise under nonbankruptcy law and the State Court is more familiar with the parties' disputes and can more expeditiously move the litigation to final judgment. Furthermore, Movant presented evidence demonstrating that the State Court Action had progressed to the point where the parties were prepared for a February 13, 2019 jury trial before the matter was stayed by the Debtor's bankruptcy filing.

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The Court also finds that the timing of the Debtor's bankruptcy filing supports a finding that the Debtor filed this case to hinder and delay the State Court Action from proceeding to trial – especially in view of the State Court's imposition of sanctions against the Debtor preventing him from presenting evidence at trial.

On balance, the Court finds that the balance of hurt tips in Movant's favor. The Debtor has not carried his burden of proving that stay relief is unwarranted.

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

III. Conclusion

For the reasons set forth above, the R/S Motion and Malicious Prosecution R/S Motion are GRANTED.

Movant is directed to lodge separate conforming proposed orders, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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Note 1: Debtor's Oppositions contain unrelated factual assertions and unresponsive legal arguments which were made in Debtor's opposition to a different motion for relief from stay that this Court heard on February 6, 2019. *See* Doc. No. 28. For example, Debtor asserts that granting relief from stay may enable Movant to recover \$1,000,000 worth of LAG assets seized pursuant to a pre-judgment writ of attachment, but Debtor made the same argument in its prior opposition and fails to explain how this is applicable to this Movant. *Id.* As these arguments appear to have been hastily copied and pasted into the present Oppositions, the Court will not address these arguments.

Note 2: *See* Note 1.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, February 25, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Chady v. Shamekh, Los Angeles Superior Court No. BC714462.

Docket 9

Tentative Ruling:

2/21/2019

See Cal. No. 100, incorporated herein by reference.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, February 25, 2019

Hearing Room 1568

10:00 AM

2:18-21732 Charles Alfred Harrison, III and Beth Thompson Harrison

Chapter 7

#102.00 HearingRE: [20] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16854 Bainbury St, Canyon Country, CA 91387 . (Jafarnia, Merdaud)

Docket 20

Tentative Ruling:

2/21/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$545,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$48,108.64. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 8.8% equity cushion in the property. The Ninth Circuit has established that an equity

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cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

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

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

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

Party Information

Debtor(s):

Charles Alfred Harrison III

Represented By
Stuart M Price

Joint Debtor(s):

Beth Thompson Harrison

Represented By
Stuart M Price

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CONT... Charles Alfred Harrison, III and Beth Thompson Harrison

Chapter 7

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, February 25, 2019

Hearing Room 1568

10:00 AM

2:19-11238 Noritaka Murayama

Chapter 7

#103.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 12963 Runway Rd, #318, Los Angeles CA 90094 .

Docket 7

Tentative Ruling:

2/21/2019

Tentative Ruling:

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

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

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

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

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

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CONT... Noritaka Murayama

Chapter 7

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

Party Information

Debtor(s):

Noritaka Murayama

Represented By
Marshall S Tierney

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1545 Calendar**

Wednesday, February 27, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medicare Provider Agreements

fr. 1-30-19; 2-6-19; 2-13-19; 2-20-19

Docket 0

Tentative Ruling:

2/26/2019

Tentative Ruling:

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1545 Calendar**

Wednesday, February 27, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing re [1153] Issues pertaining to the transfer and/or assumption of Medi-Cal Provider Agreements

fr. 1-30-19; 2-6-19; 2-13-19; 2-20-19

Docket 0

Tentative Ruling:

2/26/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 27, 2019

Hearing Room 1545

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing re [1153] Cure objections

fr. 1-30-19; 2-6-19; 2-13-19; 2-20-19

Docket 0

Tentative Ruling:

2/26/2019

Tentative Ruling:

The parties shall appear to provide an update to the Court on the status of the claims objections.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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

Monday, March 4, 2019

Hearing Room 1568

10:00 AM

2:18-20901 Ben & Reef Gardens, Inc.

Chapter 7

#1.00 HearingRE: [49] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11936 Dehougne Street, Los Angeles, CA 91605 . (Wintringer, Michael)

Docket 49

Tentative Ruling:

3/1/2019

Appearances required with respect to the Agua Dolce Motion. The Trustee should be prepared to address the issues discussed in Section II.C below.

For the reasons set forth below, the Court GRANTS the Dehougne Motion and Simpson Motion.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 49] (the "Dehougne Motion")
2. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 50] (the "Simpson Motion")
3. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 51] (the "Agua Dulce Motion," and together with the Dehougne Motion and Simpson Motion, the "R/S Motions")
 - a. Declaration of Beth Finestone, MAI, in Support of Motion for Relief from the Automatic Stay (the "Finestone Decl.")
4. Chapter 7 Trustee's Limited Opposition to Metro California, LLC's Motion for Relief from the Automatic Stay [Doc. No. 59] (the "Agua Dolce Opposition")
5. Debtor's Joinder in Chapter 7 Trustee's Limited Opposition to Metro California, LLC's Motion for Relief from the Automatic Stay as to 32222 Agua Dulce Canyon Road, Santa Clarita; and Opposition to Motions for Relief from Stay as to 11936 Dehougne St., North Hollywood, California and 7723 Simpson Avenue., North Hollywood, California [Doc. No. 60] ("Debtor's Omnibus Opposition")
6. Supplemental Declaration of Appraiser William I Greene in Support of Dehougne Motion [Doc. No. 61]

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CONT... Ben & Reef Gardens, Inc.

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7. Supplemental Declaration of Appraiser William I Greene in Support of Simpson Motion [Doc. No. 62]
8. Supplemental Declaration of Beth Finestone, Mai, in Support of Agua Dolce Motion [Doc. No. 63]
9. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Ben & Reef Gardens, Inc. (the "Debtor") filed a voluntary chapter 11 petition on September 18, 2018 (the "Petition Date"). On December 13, 2018, the Court entered an order converting the case to a case under chapter 7 [Doc. No. 29]. Wesley H. Avery was appointed and continues to serve as the chapter 7 trustee (the "Trustee").

Metro California, LLC ("Movant") seeks relief from the automatic stay pursuant to §§ 362(d)(1), (2) and (4) with respect to three parcels of real property located at:

- (i) 11936 Dehougne Street, Los Angeles, CA 91605 (the "Dehougne Property");
- (ii) 7723 Simpson Avenue, Los Angeles, CA 91605 (the "Simpson Property"); and
- (iii) 32222 Agua Dolce Canyon Road (the "Agua Dolce Property").

Movant asserts a blanket first priority lien against the Dehougne Property, Simpson Property and Agua Dolce Property (collectively, the "Properties"). Movant asserts that cause exists to grant it stay relief under §§ 362(d)(1) and (2) because its interest is not adequately protected by any equity cushion. Movant states that its loan has been in default since July 2011, the last payment it received was in July 2013 and that as of January 31, 2019, its total claim against the Debtor is \$3,304,008.84. Movant further states that the fair market value of the Properties is \$3,470,000 (Dehougne Property [\$730,000] + Simpson Property [\$600,000] + \$2,140,000 [Agua Dolce Property]). Furthermore, Movant states that the Properties are all encumbered by a \$575,210.00 judgment lien and that each property is also subject to additional tax liens (Dehougne Property [\$35,055.19], Simpson Property [\$37,436.41], and Agua Dolce Property [\$279,627.37]). Therefore, Movant submits that there is no equity in the Properties and that the Properties are not necessary for an effective reorganization since the case was converted to chapter 7.

Movant also contends that cause exists to grant it stay relief based upon the

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Debtor's bad faith pursuant to § 362(d)(4). Movant states that a day before its scheduled May 9, 2018, foreclosure sales of the Properties, the Debtor's president, Ronit Waizgen, transferred unspecified ownership interests all three Properties to herself, her husband (Shaul Yakovi), and the Debtor. Such transfers were made without Movant's knowledge or consent. Movant also states that there have been multiple bankruptcy filings claiming interests in the Properties [**Note 1**], that the Debtor's corporate status has been suspended, and that all three Properties are subject to certain liens and other issues imposed by the City of Los Angeles as a result of building and safety and habitability issues.

Based upon the foregoing, Movant requests the Court enter an order lifting the stay to allow it to proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Properties. Movant also requests that the Court waive the 14-day stay prescribed by FRBP 4001(a)(3), grant it relief under § 362(d)(4), and grant other extraordinary relief as set forth in paragraphs 9-11 of the R/S Motions.

Summary of Trustee's Limited Opposition to the Agua Dolce Motion

The Trustee filed a limited opposition to the Agua Dolce Motion requesting that the Court continue the hearing to April 15, 2019 at 10:00 a.m. to allow the Trustee an opportunity to investigate the value of the Agua Dolce Property and to continue with discussions with Movant and the Debtor regarding a consensual bankruptcy sale that could provide for a distribution to creditors. The Trustee contends that despite Movant's submission of an appraisal, the Agua Dolce Property is unique and, therefore, the true value cannot be known without an opportunity to market the property for sale. The Trustee has initiated discussions with Movant to this effect.

The Trustee does not object to Movant's request for stay relief with respect to the Dehougne and Simpson Properties on the basis that any attempts to pursue a sale of those properties through bankruptcy will not likely result in different sale prices than if the properties are sold through foreclosure. However, the Trustee contends that if the Dehougne and Simpson Properties are sold or foreclosed upon at Movant's appraised values (\$730,000 and \$600,000, respectively), Movant's remaining claim would be approximately \$1,974,008 – which is slightly below Movant's asserted fair market value for the Agua Dolce Property. Therefore, the Trustee requests an

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opportunity to explore possible options to maximize the value of the Agua Dolce Property for the benefit of the estate and Movant.

Summary of the Debtor's Untimely Omnibus Opposition

On February 20, 2019, the Debtor filed a joinder to the Trustee's Agua Dolce Opposition and separate oppositions to the Dehougne and Simpson Motions. The entirety of the Debtor's opposition is that Debtor contends that Movant has failed to carry its burden of proof under § 362(g) on the issue of equity because Movant's appraiser is unqualified to provide an opinion of value because his license allegedly expired on November 26, 2018. The Debtor also attached the Declaration of William H. Brownstein (the "Brownstein Decl."), which states: "[t]he Debtor has found ready, willing and able buyers willing to purchase all assets of the estate, not just the Agua Dolce Property, which, in my opinion, would maximize a return to creditors and the estate." Brownstein Decl., ¶ 5.

Summary of Movant's Reply

As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

A. The Debtor's Omnibus Opposition is Ordered Stricken

As a preliminary matter, the Court notes that the Debtor's Omnibus Opposition is untimely pursuant to Local Bankruptcy Rule 9013-1((f)(1) and, as Movant highlights, the Debtor is a suspended California corporation with no legal authority to participate in this bankruptcy case. *See Palm Valley Homeowners Ass'n, Inc. v. Design MTC*, 85 Cal. App. 4th 553, 560, 102 Cal. Rptr. 2d 350, 355 (Cal. 2000) ("A corporation that has been suspended – either for failure to comply with tax obligations or for failure to file the Statement of Information – is 'disabled from participating in litigation activities'"). Additionally, the Debtor had not demonstrated that it has standing to object because the Debtor has not shown that this is a surplus estate. For these reasons, the Court STRIKES the Debtor's Omnibus Opposition.

B. Cause Exists to Lift the Stay With Respect to the Dehougne and Simpson

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The Court finds that there is sufficient evidence to grant stay relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder and defraud creditors, which involved the transfer of part ownership in the Dehougne and Simpson Properties without Movant's consent or court approval and multiple bankruptcy filings. Declaration of Robert Keilch in support of the R/S Motions at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

C. The Agua Dolce Property

The Trustee's Opposition asserts that after the sale or foreclosure of the Dehougne and Simpson Properties, Movant's lien will be significantly reduced such there may be some equity available in the Agua Dolce Property that the Trustee could administer. However, the Trustee's calculations fail to take into account the asserted \$575,210 judgment lien and approximately \$72,491.60 in tax liens on those properties as well any costs associated with sale or foreclosure.

Based upon the Court's own calculations, it appears the Agua Dolce Property would have to generate a sale price significantly higher than Movant's appraised value before there will be any equity available to the estate:

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Dehougne Property Sale Price:	\$730,000
Minus Tax lien:	<u>(\$35,055.19)</u>
Available Proceeds for Reduction of Movant's Claim:	\$694,944.81
Movant's Claim After Sale of Dehougne Property:	\$2,609,064.03

Simpson Property Sale Price:	\$600,000
Minus Tax Lien:	<u>(\$37,436.41)</u>
Available Proceeds for Reduction of Movant's Claim:	\$562,563.59
Movant's Claim After Sale of Simpson Property:	\$2,046,500.44

Liens Encumbering Agua Dulce Property:	
Movant:	\$2,046,500.44
Judgment Lienholder:	\$575,210.00
Tax Lien:	<u>\$279,627.37</u>
Minimum Sale Price Necessary to Satisfy Existing Liens:	\$2,901,337.81

The above calculations do not take into account costs of sale, the Trustee's statutory fee or the administrative fees and expenses that would be incurred in the process. Therefore, it appears unlikely that a sale of the Agua Dulce Property would generate any equity that could be distributed to creditors.

The Trustee is directed to appear (in person or telephonically) to address the apparent lack of equity.

III. Conclusion

For the reasons set forth above, the Dehougne Motion and Simpson Motion are GRANTED.

Movant is directed to lodge conforming proposed orders, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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

Note 1: See *In re Shaul Yakovi*, Case No. 1:18-bk-11256-MB; *In re Ronit Waizgen*, Case No. 1:14-bk-15355-VZ; and *In re Ben & Reef Gardens, Inc.*, Case No. 2:14-bk-12962-ER.

Party Information

Debtor(s):

Ben & Reef Gardens, Inc.

Represented By
William H Brownstein

Trustee(s):

Wesley H Avery (TR)

Pro Se

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10:00 AM

2:18-20901 Ben & Reef Gardens, Inc.

Chapter 7

#2.00 HearingRE: [50] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7723 Simpson Avenue, Los Angeles, CA 91605 . (Wintringer, Michael)

Docket 50

Tentative Ruling:

3/1/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Ben & Reef Gardens, Inc.

Represented By
William H Brownstein

Trustee(s):

Wesley H Avery (TR)

Pro Se

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10:00 AM

2:18-20901 Ben & Reef Gardens, Inc.

Chapter 7

#3.00 HearingRE: [51] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 32222 Agua Dulce Canyon Road, Santa Clarita, CA 91390 . (Wintringer, Michael)

Docket 51

Tentative Ruling:

3/1/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Ben & Reef Gardens, Inc.

Represented By
William H Brownstein

Trustee(s):

Wesley H Avery (TR)

Pro Se

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10:00 AM

2:18-24510 Bondera Garrett Newton

Chapter 7

#4.00 Hearing
RE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10918 CRENSHAW BL. #1 TRIPLEX INGLEWOOD, CA 90303 and proof of service.

FR. 1-28-19

Docket 8

***** VACATED *** REASON: CONVERTED TO CHAPTER 13 ON 2-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bondera Garrett Newton	Pro Se
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Trustee(s):

Elissa Miller (TR)	Pro Se
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10:00 AM

2:18-24618 B City LLC

Chapter 7

#5.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 107 East Broadway Avenue, Glendale, CA 91205 .

fr: 2-4-19; 2-11-19

Docket 10

Tentative Ruling:

3/1/2019

Tentative Ruling:

This is a continued hearing on a Motion for relief from the automatic stay. The Court finds that Movant has cured the service issues addressed in this Court's February 11, 2019 tentative ruling. *See* Doc. Nos. 23 & 24. As of the preparation of this tentative ruling, no opposition is on file. The Court has also reviewed the *Stipulation Resolving Landlord's Motion for Relief from the Automatic Stay* [Doc. No. 25].

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

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

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CONT...

B City LLC

Chapter 7

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

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

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

Party Information

Debtor(s):

B City LLC

Represented By
Roland H Kedikian

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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10:00 AM

2:19-10020 Benjamin Naranjo

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Explorer, VIN 1FM5K7B85GGB12253 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

3/1/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject vehicle is encumbered by a perfected security interest in favor of the Movant. There is no equity in the leased vehicle and no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 0% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics,

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CONT... Benjamin Naranjo

Chapter 7

Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral). Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the vehicle is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

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

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

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

Party Information

Debtor(s):

Benjamin Naranjo

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [1485] Application Enforce Automatic Stay

Docket 1485

***** VACATED *** REASON: WITHDRAWAL FILED 2-27-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

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10:00 AM

2:19-10237 Bona Fide Ventures LLC

Chapter 11

#8.00 Hearing

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1701 Irvine Avenue, Newport Beach, California 92660 . (Bach, Julian)

Docket 9

***** VACATED *** REASON: CONTINUED 3-18-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By
Matthew D. Resnik

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10:00 AM

2:19-10237 Bona Fide Ventures LLC

Chapter 11

#9.00 Hearing

RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2 Parcels of Industrial Zoned, Raw/Vacant Land in Adelanto, California, APN 0459-432-14-0-000 and APN 0459-432-22-0-000 . (Bach, Julian)

Docket 11

***** VACATED *** REASON: CONTINUED 3-18-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By
Matthew D. Resnik

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10:00 AM

2:19-10097 Diana Velez Perez

Chapter 7

#10.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6212 1/2 orchard ave., Bell CA 90201 .

Docket 12

Tentative Ruling:

3/1/2019

Tentative Ruling:

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

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

The Movant filed an unlawful detainer action on December 10, 2018.

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

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be

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CONT... Diana Velez Perez

Chapter 7

deemed to have been voided by the automatic stay. All other relief is denied.

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

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

Party Information

Debtor(s):

Diana Velez Perez

Represented By
Randy Alexander

Trustee(s):

Sam S Leslie (TR)

Pro Se

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Tuesday, March 5, 2019

Hearing Room 1568

10:00 AM

2:17-24296 Peter Truong

Chapter 7

#1.00 HearingRE: [44] Motion for Turnover of Property with Proof of Service (Marchisotto, Michelle)

Docket 44

Tentative Ruling:

3/4/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Order Compelling Turnover of Estate Property [Doc. No. 44] (the "Motion")
 - a) Amended Proof of Service Re: [Motion] [Doc. No. 46]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") moves for an order compelling Peter Truong (the "Debtor") to turnover \$100,000 in homestead exemption proceeds (the "Homestead Funds") to the estate. The basis for the Motion is the Debtor's alleged failure to reinvest the Homestead Funds within six months of receipt.

The Debtor filed a voluntary Chapter 7 petition on November 20, 2017. Wesley H. Avery is the duly appointed and acting Trustee.

Property of the estate includes real property located at 227 S. Atlantic Blvd. #A, Monterey Park, CA 91754 (the "Property"). The Debtor asserted a \$100,000 homestead exemption in the Property, pursuant to Cal. Civ. Proc. Code § 704.730. On April 9, 2018, the Court authorized the Trustee to sell the Property to Agnes Tung Ling Ma and Anthony Hocktong Tjio for \$505,000. *See* Doc. No. 34 (the "Sale Order"). The Sale Order authorized the Trustee to pay the Debtor his \$100,000 homestead exemption from the sale proceeds.

On May 9, 2018, Better Escrow Company sent a check in the amount of \$100,000 (the "Homestead Funds") to the offices of Maria W. Tam, the Debtor's attorney. On July 17, 2018, Ms. Tam caused to be filed on the Debtor's behalf a *Substitution of*

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CONT... Peter Truong

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Attorney, which purported to substitute the Debtor, in *pro se*, as the Debtor's "new attorney." On March 1, 2019, the Debtor filed a *Substitution of Attorney*, which provided that the Debtor was now represented by attorney Ramon G. Barredo.

On November 12, 2018, the Trustee sent a letter to the Debtor, via e-mail, requesting evidence that the Debtor had reinvested the Homestead Funds in a new homestead, and requesting a response by no later than November 26, 2018. After the Debtor failed to respond, the Trustee sent a follow-up e-mail on December 6, 2018. As of January 30, 2019, the date of the filing of the Motion, the Debtor has not responded to the Trustee's requests for information.

Based upon the Debtor's failure to respond, the Trustee asserts that the Debtor has failed to reinvest the Homestead Funds in a new homestead. The Trustee contends that as a result, the Homestead Funds have lost their exempt status. *See Wolfe v. Jacobsen (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (holding that "if the debtor does not reinvest his proceeds [on account of a homestead exemption] in a new homestead within six months of receipt, they lose their exempt status"). The Trustee seeks an order compelling the Debtor to turnover the Homestead Funds to the estate.

The Debtor has not filed an opposition to the Motion.

II. Findings and Conclusions

Where, as here, the Debtor's homestead is the subject of a forced sale, proceeds that the Debtor receives on account of a homestead exemption lose their exempt status if the Debtor does not reinvest such proceeds in a new homestead within "six months after the time the proceeds are actually received by the ... debtor" *See Cal. Civ. Proc. Code § 704.720(b); Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) ("If the debtor does not reinvest his proceeds in a new homestead within six months of receipt, they lose their exempt status.").

The Trustee has established that the Homestead Funds have lost their exempt status. Pursuant to § 521(a)(3), the Debtor is obligated to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title" The Trustee sent the Debtor two requests for information regarding the disposition of the Homestead Funds. The Trustee requested this information so that he could fulfill his statutory obligation to determine whether the Homestead Funds retained their exempt status. By failing to provide the information, the Debtor failed to fulfill his statutory obligation to cooperate with the Trustee.

As a result of the Trustee's requests for information, the burden has now shifted to the Debtor to establish that the Homestead Funds remain exempt. The Trustee cannot

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prove a negative—that the Debtor did not reinvest the funds—especially where the Debtor has not fulfilled his statutory obligation to cooperate with the Trustee. Further, under Local Bankruptcy Rule 9013-1(h), the Debtor’s failure to timely oppose the Motion is deemed to be consent to the granting of the Motion. Because the Debtor has not provided any evidence that he reinvested the Homestead Funds, the Court finds that the Homestead Funds have not been reinvested and have therefore lost their exempt status.

Section 542 provides: "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title . . . , shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." The "property" referred to in §542 "is generally understood to mean 'property of the estate,' as defined in section 541." *Collier on Bankruptcy* ¶ 542.02[2] (16th rev'd ed.). The Trustee may bring a turnover motion at "any time during the pendency of the bankruptcy case." *Shapiro v. Henson*, 739 F.3d 1198, 1200 (9th Cir. 2014).

Having lost their exempt status, the Homestead Funds are now property of the estate. Among other duties, the Trustee has the obligation to "collect and reduce to money the property of the estate." §704(a)(1) and (a)(4). The Trustee is entitled to turnover of the funds to enable him to fulfill his statutory responsibilities. The Debtor is **ORDERED** to turnover the Homestead Funds to the Trustee by no later than **March 19, 2019**.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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Debtor(s):

Peter Truong

Represented By
Maria W Tam

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

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2:18-21646 Michael Andre Walker

Chapter 7

#2.00 Show Cause Hearing re [34] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

***** VACATED *** REASON: THIRD INSTALLMENT PAID 1-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Andre Walker Pro Se

Trustee(s):

Wesley H Avery (TR) Pro Se

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2:18-22393 Sharon R Williams

Chapter 7

#3.00 Show Cause Hearing re [17] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments

Docket 0

*** VACATED *** REASON: FILING FEES PAID IN FULL ON 1/30/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon R Williams

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Larry D Simons

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2:18-23596 Sheriee James

Chapter 7

#4.00 Show Cause Hearing
RE: [7] **Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments**

Docket 1

***** VACATED *** REASON: DISMISSED FOR FAILURE TO APPEAR AT 341 MEETING ON 1/24/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheriee James

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-23852 Du Un Kim

Chapter 7

Adv#: 2:18-01437 LA Financial Credit Union v. Kim et al

#5.00 HearingRE: [12] Motion for Default Judgment (Anaya, Alana)

Docket 12

Tentative Ruling:

3/4/2019

Because Debtor/Defendant's bankruptcy case has been dismissed, the Court must dismiss this dischargeability action as moot. The Motion for Default Judgment is DENIED.

Pleadings Filed and Reviewed:

- 1) Motion for Default Judgment and Memorandum of Points and Authorities in Support of Default Judgment [Doc. No. 12] (the "Motion")
 - a) Declaration of Alana B. Anaya in Support of Entry of Default Judgment [Doc. No. 12-1]
 - b) Declaration of Adriana Sera in Support of Default Judgment [Doc. No. 12-2]
 - c) Notice of Hearing on Motion for Default Judgment [Doc. No. 12-3]
- 2) Complaint to Determine the Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2) [Doc. No. 1] (the "Complaint")
- 3) No opposition to Motion is on file

I. Facts and Summary of Pleadings

LA Financial Credit Union (the "Plaintiff") commenced this dischargeability action against Du Un Kim (the "Debtor/Defendant") on December 13, 2018. The Complaint alleges that Debtor/Defendant induced Plaintiff to extend credit by making false statements with respect to the amount of his monthly income. The Complaint seeks a judgment that indebtedness in the amount of \$23,138.07, plus prejudgment interest, costs, and attorneys' fees, is non-dischargeable pursuant to § 523(a)(2)(A) and (B).

On January 30, 2019, the Clerk of the Court entered Debtor/Defendant's default. Plaintiff now moves for entry of default judgment.

On December 17, 2018, the Court dismissed Debtor/Defendant's voluntary

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CONT... Du Un Kim

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Chapter 7 bankruptcy case, based upon Debtor/Defendant's failure to timely file all required schedules. On February 1, 2019, Debtor/Defendant's bankruptcy case was closed.

II. Findings and Conclusions

A case is moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969) (internal quotations omitted). "If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp. v. Symczyk*, 596 U.S. 66, 72 (2013).

The Complaint seeks a judgment that indebtedness is excepted from the Debtor/Defendant's discharge pursuant to § 523(a)(2)(A) and (B). Debtor/Defendant's bankruptcy case has been dismissed, making it impossible for Debtor/Defendant to obtain a discharge. Because Debtor/Defendant cannot obtain a discharge, the Court lacks the ability to grant Plaintiff the relief it seeks. Consequently, the action is moot, and must be dismissed based upon the Court's lack of jurisdiction.

The Court will prepare and enter orders denying the Motion for Default Judgment and dismissing this action.

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

Party Information

Debtor(s):

Du Un Kim

Pro Se

Defendant(s):

Du Un Kim

Pro Se

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DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

LA Financial Credit Union

Represented By
Alana B Anaya

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:11-57514 Sondra Derderian

Chapter 11

#6.00 HearingRE: [333] Motion to Withdraw as Attorney

Docket 333

Tentative Ruling:

3/4/2019

For the reasons set forth below, the Motion to Withdraw is DENIED without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Authorizing Jaurigue Law Group to Withdraw as Counsel for Reorganized Debtor Sondra Derderian [Doc. No. 333] (the "Motion to Withdraw")
2. Opposition to Jaurigue Law Group's Motion to Withdraw as Counsel for Reorganized Debtor Sondra Derderian [Doc. No. 336] (the "Opposition")
3. Reply in Support of Motion for Order Authorizing Jaurigue Law Group to Withdraw as Counsel for Reorganized Debtor Sondra Derderian [Doc. No. 337] (the "Reply")

I. Facts and Summary of Pleadings

Sondra Derderian (the "Debtor") filed a voluntary chapter 11 case on November 17, 2011 (the "Petition Date"). On December 11, 2013, this Court granted the Debtor's application to employ Jaurigue Law Group ("Counsel") as her replacement general bankruptcy counsel [Doc. No. 128]. On November 6, 2014, this Court entered an order confirming the Debtor's chapter 11 plan of reorganization [Doc. No. 294].

Counsel currently seeks an order authorizing it to withdraw as Debtor's bankruptcy counsel due to irreconcilable differences. Counsel states that it cannot elaborate on the specific details without the Debtor's consent but submits that the Debtor has engaged in conduct that renders it unreasonably difficult for Counsel to effectively represent the Debtor. Counsel also states that the Debtor has breached her payment obligations under Counsel's retention agreement. Counsel states that if the

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CONT... Sondra Derderian

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Court requires further information as to the basis for its request, Counsel is prepared to supplement the record *in camera*. Finally, Counsel contends that its withdrawal will not prejudice the Debtor or the estate because Counsel has informed the Debtor of its intent to withdraw and there are currently no pending motions or adversary proceedings.

The Debtor filed a timely opposition arguing that the Motion to Withdraw is without merit and brought frivolously without any forewarning to the Debtor. The Debtor requests that the hearing on this matter be conducted *in camera* to allow an opportunity for full disclosure concerning the source of the parties' disagreement and the degree to which withdrawal will delay resolution of the Debtor's case.

Counsel filed a timely reply arguing that the Debtor has not advanced any persuasive reason why this Court should not grant its request to withdraw. Counsel reiterates that the Debtor has materially breached her fee agreement and has had an outstanding balance for nearly three years. This breach provides a basis for withdrawal under California Rule of Professional Conduct 1.16(b)(5). Additionally, the parties' relationship has now become adversarial and counter-productive.

II. Findings of Fact and Conclusions of Law

Local Bankruptcy Rule ("LBR") 2091-1(a) requires that counsel obtain leave of court to withdraw from representation. LBR 2091-1(e)(2) provides that "no ... withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion."

California Rule of Professional Conduct 3-700(C)(1)(d) provides that an attorney may seek permission to withdraw if "[t]he client...renders it unreasonably difficult for the member to carry out the employment effectively." A breakdown in the attorney-client relationship renders representation unreasonably difficult and is grounds for authorizing withdrawal. *Aceves v. Superior Court*, 51 Cal. App. 4th 584, 592, 59 Cal. Rptr. 2d 280, 283-84 (1996). California Rule of Professional Conduct 3-700(A)(2) provides that an attorney "shall not withdraw from employment until the [attorney] has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client [and] allowing time for employment of other counsel"

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CONT... Sondra Derderian

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As a preliminary matter, the parties' request for the Court to consider evidence or argument *in camera* is denied. The Debtor does not dispute that she has not paid all of Counsel's outstanding fees, which is grounds for this Court to permit Counsel's request to withdraw. However, in this Court's view, it does not appear that Counsel has fully explored available options for resolving the Debtor's dispute with Ocwen Loan Servicing ("Ocwen").

In the most recent post-confirmation status report, Counsel informed the Court of its efforts to resolve an accounting issue between the Debtor and Class 3 secured creditor Ocwen. *See* Doc. No. 331. Counsel further advised the Court that resolution of that issue would enable the Debtor to seek entry of a final decree closing the case. *Id.* While the Court is mindful of the burden Counsel will endure in continuing its representation of the Debtor, the Court finds that any such burden does not outweigh the prejudice to the Debtor in permitting Counsel's request to withdraw or the burden on the Court if this case sits idly by. Considering the advanced stage of this case, it will likely be difficult and/or unnecessarily expensive for the Debtor to find competent counsel to represent her. Counsel is intimately familiar with the outstanding Ocwen issues and is in the best position to bring this case to conclusion.

For these reasons, the Motion to Withdraw is DENIED. After the hearing, the Court will issue an Order to Show Cause directing the Debtor to appear at a hearing on **July 10, 2019 at 10:00 a.m.** to address why this case should not be dismissed pursuant to 11 U.S.C. § 1112(b)(4)(M) based upon the Debtor's apparent inability to effectuate substantial consummation of a confirmed plan.

Counsel may renew its motion to withdraw by filing a regularly noticed motion and selecting a hearing date on or after July 10, 2019, provided that Counsel describes what efforts it has undertaken to resolve the Ocwen dispute and why those efforts have not been fruitful.

III. Conclusion

For the reasons set forth above, the Withdrawal Motion is DENIED.

The Court will prepare the order.

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Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A. Stubbe

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2:18-17000 Keith Black Racing Engines, Inc.

Chapter 11

#7.00 Hearing
RE: [45] Motion to Reject Lease or Executory Contract Debtor and Debtor-in-Possession's Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing Debtor's Rejection of the Contract, as Executory; With Proof of Service

Docket 45

***** VACATED *** REASON: PER ORDER ENTERED 2-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keith Black Racing Engines, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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2:18-21828 F.A.S.S.T. LLC

Chapter 11

#8.00 Hearing
RE: [111] Motion to Extend Time Motion For Order Extending Time To Assume
Or Reject Executory Contracts (Real Estate Leases); Memorandum Of Points
And Authorities; Declaration Of Charles Debus In Support Thereof

Docket 111

*** VACATED *** REASON: PER ORDER ENTERED 2-25-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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2:18-21828 F.A.S.S.T. LLC

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#8.10 Show Cause Hearing RE Order to Show Cause Hearing Why Case Should Not be Converted or Dismissed

Docket 7

***** VACATED *** REASON: PER ORDER ENTERED 2-25-19**

Tentative Ruling:

2/12/2019

For the reasons set forth below, the Debtor's request for continued use of cash collateral is DENIED.

Pleadings Filed and Reviewed

1. Emergency Motion for Authority to: (A) Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Grant Replacement Liens; and (C) Set Final Hearing [Doc. No. 7] (the "Cash Collateral Motion")
 - a. Declaration of Charles DeBus in Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - i. Amended Order Setting Hearing on First Day Motions [Doc. No. 18]
 - ii. Declaration of Tatyana Mencachian re Service of Emergency Motions and Order Setting Hearing on First Day Motions [Doc. No. 25]
 - b. Order (A) Authorizing Debtor to Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Granting Replacement Liens; and (C) Setting Final Hearing [Doc. No. 43] (the "Interim Cash Collateral Order")
 - c. Notice of Hearing on (1) Debtor's Motion for Continued Use of Cash Collateral; and (2) To Borrow Money and to Grant Administrative Priority to Lender [Doc. No. 38]
 - d. Declaration of Troy Finfrock Re Value of Debtor's Business and Equipment [Doc. No. 55] (the "Finfrock Decl.")
 - e. Supplemental Declaration of Charles DeBus in Support of Cash Collateral Motion [Doc. No. 54] (the "Supp. DeBus Decl.")
 - f. Tentative Ruling on Debtor's Continued Interim Use of Cash Collateral [Doc. No. 65] (the "November 19 Ruling")
 - g. Notice of hearing on Debtor's Motion for Continued Use of Cash Collateral [Doc. No. 67]

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- h. Order Authorizing Debtor to Use Cash Collateral on an Interim Basis [Doc. No. 75] (the "Second Interim Cash Collateral Order")

This is a continued hearing on the Debtor's request for continued use of cash collateral. On November 26, 2018, the Court entered an interim order authorizing the Debtor's continued use of cash collateral through and including February 13, 2019 [Doc. No. 75] (the "Second Interim Cash Collateral Order"). In the Court's November 19 Ruling [Doc. No. 65], the Court stated:

The Court authorizes further interim use of cash collateral through and including **February 13, 2019**. A further interim hearing on the continued use of cash collateral shall take place on February 13, 2019, at 10:00 a.m. . . . The Debtor shall submit additional evidence in support of the continued use of cash collateral by no later than **January 23, 2019**. Such additional evidence shall include, at a minimum, updated financial projections as well as a discussion of the results of the Debtor's efforts to improve the profitability of the gym. The Debtor shall also submit information regarding the results of its investigation as to the validity of the security interests asserted by the secured creditors.

As of the preparation of this tentative ruling, the Debtor has not supplied any supplemental evidence or information in support of its continued use of cash collateral. Accordingly, the Court cannot determine that the secured creditors' interests in cash collateral is adequately protected.

For the reasons set forth above, the Debtor's request for continued use of cash collateral is DENIED.

After the hearing the Court will prepare an order denying the Debtor's request for continued use of cash collateral.

The Debtor is also directed to appear at a hearing on **March 5, 2019 at 10:00 a.m.** to show cause why this case should not be converted or dismissed in light of this Court's denial of the Debtor's continued use of cash collateral. The Court will prepare the order.

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Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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2:19-10037 Avelina Conde Castillo

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#9.00 Hearing
RE: [12] Motion to Dismiss Debtor

Docket 12

Tentative Ruling:

3/4/2019

Tentative Ruling:

Denied as MOOT in view of the Court's concurrently posted tentative ruling indicating the Court's intent to grant the U.S. Trustee's Motion to Convert, Dismiss or Appoint Chapter 11 Trustee Pursuant to section 1112(b)(4). *See* Cal. No. 10, incorporated by reference. After the hearing, the Court will prepare the order.

Party Information

Debtor(s):

Avelina Conde Castillo

Represented By
Krystina T Tran

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2:19-10037 Avelina Conde Castillo

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#10.00 HearingRE: [18] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 18

Tentative Ruling:

3/4/2019

Appearances required.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 18] (the "Motion")
2. Notice of Motion [Doc. No. 20]
3. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Avelina Conde Castillo (the "Debtor") filed this voluntary chapter 11 case on January 2, 2019 (the "Petition Date"). The Office of the United States Trustee (the "UST") seeks to dismiss this case with a 2-year refiling bar based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed
- ii. Debtor has failed to:
 - a. File an application to Employ Attorney
 - b. Appear at the § 341(a) examination
 - c. Provide sufficient evidence of closing of all pre-petition bank accounts, including closing bank statements; and or bank account information in the chapter 11 compliance declaration
 - d. Provide sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts.
 - e. Provide sufficient evidence of current insurance coverage

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CONT...

Avelina Conde Castillo

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- f. Provide a projected cash flow statement for the first ninety days of operation under chapter 11
- g. Provide conformed copies of the recording of Debtor's bankruptcy petition in each county in which real property is owned
- h. Provide a statement of major issues and timetable report
- i. File monthly operating reports ("MORs") since the Petition Date
- j. Pay 1st quarter UST fees (currently accruing)
- k. Seek authority to use cash collateral

See Declaration of Maria A. Ramos (the "Ramos Decl.").

The UST also states this case is the ninth bankruptcy filing between the Debtor and her spouse, Dominador R. Castillo, and that these serial bankruptcy filings evidence the Debtor's bad faith in filing this case. *See Ramos Decl.*, ¶ 4. **[Note 1]** The UST highlights that on May 17, 2018, this Court dismissed one of the Debtor's prior chapter 11 cases with a 180-day refiling bar. *See Case No. 2:18-bk-12147-ER, Doc. No. 21.* Therefore, the UST contends that the Debtor's failure to comply with her obligations in this case suggest that she had no intention of using this filing for legitimate reorganization purposes. The UST requests that the Court impose a 2-year refiling bar.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The

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enumerated causes are not exhaustive, and ‘the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.’” *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff’d*, 264 F.3d 803 (9th Cir. 2001).

The long list of deficiencies detailed above provides more than sufficient "cause" within the meaning of § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case. Additionally, the Debtor has separately moved to voluntarily dismiss this case on the grounds that "[a]fter attending the [Initial Debtor Interview], Debtor considered all the factors discussed with Mr. Baddin, and determined that circumstances exist, which would hinder the reasonable likelihood that a plan will be timely confirmed." *See* Doc. No. 12. Finally, the history of the Debtor’s and the Debtor’s spouse’s bankruptcy filings and the lack of any meaningful efforts to reorganize her affairs supports a finding that the Debtor filed this case in bad faith.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int’l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The UST states that, based upon its review of the Debtor’s Schedules and case dockets, there do not appear to be any assets that a trustee can readily administer in a chapter 7 case. Therefore, the UST contends that dismissal with a 2-year bar is in the best interest of creditors. However, the Debtor’s Schedules identify fee simple interests in three parcels of real property: (i) 11837 Wagner Street, Culver City, CA 90230 (the "Wagner Property"); (ii) 7824 Ira Avenue; Bell Gardens, CA 90201 (the "Ira Property"); and (iii) 4936-38 Clara Street, Bell Gardens, CA 90201 (the "Clara Property"). The UST’s Motion does not provide any explanation as to why it concluded that these properties could not be administered for the benefit of creditors.

[Note 2]

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CONT... Avelina Conde Castillo

Chapter 11

Therefore, the UST is directed to appear at the hearing – in person or telephonically – to provide further clarification on this issue.

In the event the UST provides adequate grounds for this Court to conclude that conversion to chapter 7 would not be in the best interest of creditors, the Court is prepared to dismiss this case with a 2-year refiling bar based upon the Debtor's serial bankruptcy filings and this Court's determination that the Debtor filed this case in bad faith.

Note 1: See *In re Avelina and Dominador Castillo*, Case No. 2:10-bk-49695-ER; *In re Avelinda and Dominador Castillo*, Case No. 2:10-64804-BR; *In re Avelina Castillo*, Case No. 2:13-bk-37163; *In re Avelina Castillo*, Case No. 2:15-20313-NB; *In re Dominador Castillo*, Case No. 2:13-bk-25089-VZ; *In re Dominador Castillo*, Case No. 2:14-bk-29753-NB; *In re Dominador Castillo*, Case No. 2:14-bk-10216-NB; *In re Avelina Castillo*, Case No. 2:18-bk-12147-ER.

Note 2: Based upon this Court's independent review of the docket in the Debtor's most recent bankruptcy case (*In re Avelina Castillo*, Case No. 2:18-bk-12147-ER), it appears that on June 14, 2018, this Court granted Wells Fargo Bank, N.A.'s ("Wells Fargo") Motion for Relief from the Automatic Stay with respect to the Wagner Property [See Doc. Nos. 18, 34]. Accordingly, it is possible that Wells Fargo has already foreclosed upon the Wagner Property and there is nothing left for a chapter 7 trustee to administer. The same may be true for the Ira and Clara Properties. However, on this record, the Court cannot conclude that there are no assets that a chapter 7 trustee could administer.

Party Information

Debtor(s):

Avelina Conde Castillo

Represented By
Krystina T Tran

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2:18-17345 Fu Kong Inc.

Chapter 7

#100.00 HearingRE: [131] Application for Compensation FIRST AND FINAL FEE APPLICATION OF LO & LO LLP, COUNSEL FOR DEBTOR AND DEBTOR IN POSSESSION DURING ITS CHAPTER 11 CASE, FOR ALLOWANCE AND PAYMENT OF FEES AND EXPENSES INCURRED DURING THE PERIOD OF JUNE 26, 2018 THROUGH JANUARY 8, 2019 for Michael Y Lo, Debtor's Attorney, Period: 6/26/2018 to 1/8/2019, Fee: \$106,882.50, Expenses: \$1,011.60. (Lo, Michael)

Docket 131

Tentative Ruling:

3/4/2019

No appearances. Stipulation lodged.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

Trustee(s):

Howard Ehrenberg

Represented By
Steven Werth

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2:18-24215 Patricia J. Kennedy

Chapter 7

#101.00 Hearing re [13] Objections Of Creditors To Claim Of Exemptions Of Debtor Patricia J. Kennedy

Docket 0

Tentative Ruling:

3/4/2019

Motion withdrawn.

Party Information

Debtor(s):

Patricia J. Kennedy

Represented By
Craig G Margulies

Trustee(s):

Timothy Yoo (TR)

Represented By
Robert A Hessling

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Hearing Room 1568

11:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#103.00 HearingRE: [1099] Motion Chapter 7 Trustee's Motion for Order Authorizing Distribution of Funds Pursuant to 11 U.S.C. § 105(a); Memorandum of Points and Authorities; and Declaration of Beth E. Gaschen in Support Thereof (with Proof of Service) (Gaschen, Beth)

Docket 1099

Tentative Ruling:

3/4/2019

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

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Authorizing Distribution of Funds Pursuant to 11 U.S.C. § 105(a) [Doc. No. 1099] (the "Motion")
 - a) Notice of Motion [Doc. No. 1100]
- 2) Declaration of Robert S. Altagen in Response to [Motion] [Doc. No. 1102]
- 3) Response to Declaration of Robert S. Altagen in Response to Chapter 7 Trustee's Motion for Order Authorizing Distribution of Funds [Doc. No. 1103]
- 4) Concurrence in Trustee's Motion [Doc. No. 1104]

I. Facts and Summary of Pleadings

This case was transferred to the undersigned Judge on January 3, 2018. Doc. No. 1025. Prior proceedings were heard by Judges Saltzman, Carroll, and Bufford.

Jayampath P. Dharmasuriya (the "Debtor") filed a voluntary Chapter 11 petition on July 20, 2009. On September 7, 2011, Jeffrey I. Golden was appointed as the Chapter 11 Trustee. Upon the Trustee's motion, the case was converted to Chapter 7 on November 2, 2011. Jeffrey I. Golden was reappointed as the Chapter 7 Trustee (the "Trustee") on November 9, 2011.

The Debtor's Statement of Financial Affairs listed three bank accounts located in London (the "London Bank Accounts"). On December 1, 2014, the Court approved a global settlement agreement (the "Settlement Agreement") between the Trustee, Donald H. Eller, Sarath and Hemanthi Gunatilake, Nalan Samarawickrema ("Samarawickrema"), Andrew Holdings, Inc. ("Andrew Holdings"), Jayani

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CONT... Jayampath P Dharmasuriya

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Manikkage, and the Debtor. Doc. No. 798. One of the provisions of the Settlement Agreement requires the Trustee to turnover up to \$50,000 of the funds in the London Bank Accounts to Samarawickrema and Andrew Holdings.

The Trustee moves for an order authorizing him to distribute the funds in the London Bank Accounts (the "Funds") in accordance with the Settlement Agreement. Although the Settlement Agreement has been approved by the Court, the Trustee seeks an additional court order given Sonali Perera's position that the Funds should be paid to him, rather than to Samarawickrema and Andrew Holdings.

In Opposition to the Motion, Perera contends that the Funds should be paid to him because of a settlement agreement entered into by Perera, on the one hand, and Samarawickrema and Andrew Holdings, on the other hand, in litigation before the Los Angeles Superior Court (the "State Court Settlement"). The relevant provision of the State Court Settlement provides:

Borrowers [Samarawickrema and Andrew Holdings] herewith assign their collective shares of the proceeds of the final distribution of the Dharmasuriya bankruptcy estate upon Borrowers' filed claims, to the Lender [Perera] in an amount no greater than the amount of the unpaid balance on this Note

Doc. No. 1102, Ex. A at ¶ 5.

In Reply to Perera's Opposition, the Trustee asserts that the Funds do not constitute a distribution to Samarawickrema and/or Andrew Holdings on account of their allowed claims in the Debtor's case, and therefore do not fall within the scope of the State Court Settlement.

Samarawickrema and Andrew Holdings filed a joinder to the Motion on March 1, 2019.

II. Findings and Conclusions

Consistent with the Trustee's position, the Court finds that the distribution of the Funds does not constitute a distribution to Samarawickrema and/or Andrew Holdings on account of the claims that those parties have filed in the Debtor's case. Instead, Samarawickrema and Andrew Holdings are entitled to the Funds as a result of the Court's approval of the Settlement Agreement. Distribution of the Funds is distinct from any distribution that Samarawickrema and/or Andrew Holdings may be entitled to receive on account of the claims they have filed against the Debtor. **[Note 1]** Therefore, distribution of the Funds to Samarawickrema and Andrew Holdings does not

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contravene the provisions of the State Court Settlement.

Based upon the foregoing, the Motion is GRANTED. The Trustee shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1

With respect to any distribution that Samawickrema and/or Andrew Holdings may be entitled to receive on account of their claims against the Debtor, the Court notes that Judge Saltzman has sustained Samawickrema and Andrew Holdings' objections to two different *Notices of Transfer of Claims* filed by Perera with respect to the claims of Samawickrema and Andrew Holdings.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By

William H Brownstein

Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

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Michael J. Weiland

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2:18-12437 Wardine Bridges

Chapter 7

#1.00 HearingRE: [24] Motion for Turnover of Property with Proof of Service (Chung, Toan)

Docket 24

Tentative Ruling:

3/5/2019

The Turnover Motion is GRANTED in PART as set forth below.

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Notice of Motion and Motion for Order Compelling Turnover of Estate Property and Documents [Doc. No. 24] (the "Turnover Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Wardine Bridges (the "Debtor") filed this voluntary chapter 7 case in pro per on March 6, 2018 (the "Petition Date"). Jason M. Rund is the appointed and acting chapter 7 trustee (the "Trustee"). The Trustee seeks an order compelling the Debtor to turn over real property located at 845 East Avenue K7, Lancaster, CA 93535 (the "Real Property") pursuant to § 542 so that the Trustee can market the property for sale.

The Trustee states that the Debtor valued the Real Property at \$160,000, identified only one lien in the amount of \$11,000 against the Real Property, and claimed an exemption of \$23,175 in the Real Property. Accordingly, the Trustee believes there is approximately \$114,485.92 in equity in the Real Property. After deducting costs of sale and payment of administrative claims, the Trustee estimates that there would be approximately \$57,000 in proceeds available for distribution to creditors. The Trustee also requests that the Debtor be ordered to turn over all keys, mortgage statements and proof of insurance to facilitate the sale.

As of the preparation of this tentative ruling, no opposition is on file.

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II. Findings of Fact and Conclusions of Law

Under §§ 521 and 542, the Debtor is obliged to identify all property of the estate and to turn over the same to the trustee, unless the property is of inconsequential value. Section 542(a) provides that an entity in possession of estate property "shall" deliver such property to the trustee. *Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996). This a mandatory duty arising upon the filing of the bankruptcy petition. *Id.* The term "entity" as defined in § 101(15) is "broad enough to encompass an individual chapter 7 debtor." *Bencomo v. Avery (In re Bencomo)*, 2016 Bankr. LEXIS 2901, at * 13 (B.A.P. 9th Cir. Aug. 8, 2016).

In light of the Trustee's representation that a sale of the Real Property will yield approximately \$114,485.92, the Court finds that the Debtor possesses property that is of value to the estate. Accordingly, the Debtor is ordered to turn over the Real Property, as well as all keys, mortgage statements, and proof of insurance, to the Trustee pursuant to § 542 **on or before April 12, 2019.**

If the Debtor fails to timely comply with the deadline set forth above, the Trustee may submit a declaration describing the circumstances that the Trustee believes warrant issuance of a writ of eviction and upload an order with the Court's LOU system that complies with Local Bankruptcy Rule 7064-1 and contains the mandatory language set forth in LBR 7064-1(e).

III. Conclusion

For the reasons set forth above, the Turnover Motion is GRANTED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wardine Bridges

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Toan B Chung

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

Chapter 11

#2.00 Hearing re [1435] Objection to proofs of claim #
254,289,291,294,295,296,297,298,299,300,301,302,303,304,306,307,308,309,312,313,
314.

Docket 0

Tentative Ruling:

3/5/2019

For the reasons set forth below, the Liquidating Trustee's Omnibus Claim Objection is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) First Omnibus Objection to and Motion to Disallow, Recharacterize, and/or Modify Administrative Expense and Section 503(b)(9) Proofs of Claim [Doc. No. 1435]
- 2) Response to First Omnibus Objection to and Motion to Disallow, Recharacterize, and/or Modify Administrative Expense and Section 503(b)(9) Proofs of Claim [filed by Fujifilm Medical Systems USA, Inc.] [Doc. No. 1464]
 - a) Declaration of Jesse Metcalf in Support of Response to First Omnibus Objection to and Motion to Disallow, Recharacterize, and/or Modify Administrative Expense and Section 503(b)(9) Proofs of Claim [Doc. No. 1465]
- 3) Opposition of JSE Emergency Medical Group, Inc. to First Omnibus Objection to and Motion to Disallow, Recharacterize, and/or Modify Administrative Expense and Section 503(b)(9) Proofs of Claim [Doc. No. 1462]
- 4) Reply in Support of First Omnibus Objection to and Motion to Disallow, Recharacterize, and/or Modify Administrative Expense and Section 503(b)(9) Proofs of Claim [Doc. No. 1467]

I. Facts and Summary of Pleadings

Gardens Regional Hospital and Medical Center, Inc. (the "Debtor") filed a

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voluntary Chapter 11 petition on June 6, 2016 (the "Petition Date"). On September 18, 2018, the Court confirmed the Debtor's *Joint Chapter 11 Plan of Liquidation* (the "Plan"). The Plan appointed Michael R. Lane as the Liquidating Trustee responsible for, among other things, objecting to claims.

The Liquidating Trustee objects to 21 administrative expense and § 503(b)(9) claims on various grounds. The only claimants opposing the Liquidating Trustee's Motion are Fujifilm Medical Systems USA, Inc. ("Fujifilm") and JSE Emergency Medical Group, Inc. ("JSE").

**A. Summary of Papers Filed in Connection with the Liquidating Trustee's
Objection to JSE's Administrative Expense Claim**

1. Background

On April 1, 2005, the Debtor entered into an *Agreement for Emergency Medical Services* (the "EMS Agreement") with JSE. Under the EMS Agreement, JSE provided physicians to staff the Debtor's general acute care hospital, located at 21530 South Pioneer Boulevard, Hawaiian Gardens, CA (the "Hospital"). Among other things, the EMS Agreement required the Debtor to provide professional liability insurance ("Malpractice Insurance") on behalf of JSE and its providers with respect to their services under the EMS Agreement. The Malpractice Insurance to be provided under the EMS Agreement was required to "provide coverage for occurrences or claims during the term of this Agreement and any renewal thereof [Debtor] agrees to purchase, at its own expense, 'tail' coverage, if warranted." EMS Agreement at ¶7.1.

On October 31, 2016, the Court granted the Debtor's motion to reject the EMS Agreement (the "Rejection Motion"). Doc. No. 508 (the "Rejection Order"). The Rejection Order provided that the EMS Agreement "shall be deemed rejected, as of midnight, October 31, 2016."

A key dispute in the litigation of the Rejection Motion was whether the Debtor was required to purchase tail coverage on JSE's behalf. There are two basic types of professional liability insurance policies: occurrence-based policies and claims-made policies. Under a claims-made policy, only claims which are reported within a specified period of time are covered. A claims-made policy can be augmented with tail coverage, which extends the reporting period in perpetuity. Tail coverage is unnecessary under an occurrence-based policy, which covers any occurrence during the policy period regardless of when the claim is made.

JSE asserted that the terms of the EMS Agreement required the Debtor to purchase tail coverage on its behalf. JSE contended that tail coverage was necessary

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because the Debtor had purchased a claims-made policies, leaving JSE exposed to liability in connection with the services it performed under the EMS Agreement. The Debtor's position was that tail coverage was not "warranted" under the EMS Agreement.

In finding that the Debtor had shown good cause to reject the EMS Agreement, the Court did not determine whether the Debtor was required to purchase tail coverage for JSE, or whether the Debtor's failure to purchase tail coverage would entitle JSE to an administrative claim. The Court found that adjudication of these issues was not appropriate in the context of the Rejection Motion.

2. The Liquidating Trustee's Objection to JSE's Administrative Expense Claim

JSE asserts an administrative expense claim, in the amount of \$152,832.00, for "tail insurance coverage incurred post-petition as a result of Debtor in Possession's rejection" of the EMS Agreement. JSE maintains that the Debtor's rejection of the EMS Agreement forced it to purchase tail coverage to protect itself from any liability it may have incurred in connection with performing services under the EMS Agreement. JSE contends that it is impossible to allocate the cost of the premium between prepetition services and postpetition services, and therefore that the entire cost of the premium must be treated as an administrative expense.

The Liquidating Trustee disputes JSE's assertion that the Debtor's rejection of the EMS Agreement entitles JSE to an administrative expense claim. According to the Liquidating Trustee, rejection of the EMS Agreement effectuated an immediate prepetition breach of that contract, pursuant to § 365(g)(1). The Liquidating Trustee contends that under § 502(g)(1), JSE's claim arising from the rejection of the EMS Agreement must be determined and allowed "as if such claim had arisen before the date of the filing of the petition." As a result, the Liquidating Trustee argues that any damages JSE suffered from the rejection of the EMS Agreement are not entitled to administrative status.

B. Summary of Papers Filed in Connection with the Liquidating Trustee's Objection to Fujifilm's Administrative Expense Claim

On May 14, 2015, Fujifilm and the Debtor entered into the *Emerald Preferred Service Agreement* (the "Service Contract"), pursuant to which Fujifilm provided maintenance and service for certain medical equipment used in the operation of the Hospital.

The Liquidating Trustee asserts that the Service Contract was terminated by a

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letter sent by the Debtor on February 15, 2017. Fujifilm asserts that the letter did not terminate the Service Contract, because it did not comply with the Service Contract's provisions for termination, and because Fujifilm did not receive the letter until May 22, 2017.

Fujifilm asserts an administrative expense claim of \$28,184.75. The claim is based on an invoice dated October 14, 2016, in the amount of \$9,728.25, for the period between November 14, 2016 and February 13, 2017; an invoice dated January 14, 2017, in the amount of \$9,728.25, for the period between February 14, 2017 and May 13, 2017; and an invoice dated April 14, 2017, in the amount of \$9,728.25, for the period between May 14, 2017 and August 13, 2017.

The Liquidating Trustee argues that the portion of Fujifilm's claim attributable to the period subsequent to February 1, 2017 should not be entitled to administrative status. The Liquidating Trustee states that the Service Contract provided no benefit to the estate because the closure of the Hospital on February 1, 2017 made Fujifilm's equipment maintenance services unnecessary. The Liquidating Trustee points to the declaration testimony of Stan Otake, the Debtor's CEO. Mr. Otake testifies that "[a]fter the closure of the Debtor's hospital, Fujifilm did not provide any further services to the Debtor and the Debtor did not receive any benefit from its contract with Fujifilm." Otake Decl. at ¶ 11. The Liquidating Trustee notes that the declaration submitted by Fujifilm in support of its Opposition to the Motion does not indicate that Fujifilm provided any equipment maintenance services subsequent to the Hospital's closure. According to the Liquidating Trustee, the absence of such evidence in Fujifilm's Opposition bolsters Mr. Otake's testimony that the Debtor received no benefit from the Service Contract subsequent to the Hospital's closure.

Fujifilm contends that the estate remains liable under the Service Contract because the contract was not effectively terminated until May 16, 2017. Fujifilm asserts that the Service Contract was akin to an insurance contract and therefore provided a benefit to the estate.

II. Findings and Conclusions

A. The Liquidating Trustee's Objection to JSE's Administrative Expense Claim is Sustained

Section 503(b)(1)(A) accords administrative priority to claims for "the actual, necessary costs and expenses of preserving the estate"

As the Ninth Circuit has explained:

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The burden of proving an administrative expense claim is on the claimant. The claimant must show that the debt asserted to be an administrative expense

(1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession); and (2) directly and substantially benefitted the estate.

In re White Motor Corp., 831 F.2d 106, 110 (6th Cir.1987). The bankruptcy court has broad discretion to determine whether to grant such a claim. In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," § 503(1)(A), are construed narrowly.

Microsoft Corp. v. Dak Indus., Inc. (In re DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995) (internal citations omitted).

Section 365(g)(1) provides, in relevant part, that "the rejection of an executory contract ... constitutes a breach of such contract ... immediately before the date of the filing of the petition." Section 502(g) provides, in relevant part, that a "claim arising from the rejection of an executory contract ... shall be determined, and shall be allowed ... the same as if such claim had arisen before the date of the filing of the petition." "[R]ejection of an executory contract serves two purposes. It relieves the debtor of burdensome future obligations while he is trying to recover financially and it constitutes a breach of a contract which permits the other party to file a creditor's claim." *In re Onecast Media, Inc.*, 439 F.3d 558, 563 (9th Cir. 2006) (internal citations omitted).

Consistent with the plain language of §§ 365(g)(1) and 502(g), it is well established that a debtor's rejection of an executory contract does not entitle the contract counterparty to an administrative expense claim. *See, e.g., In re AppliedTheory Corp.*, 312 B.R. 225, 236–37 (Bankr. S.D.N.Y. 2004) ("It would frustrate the entire purpose of granting debtors the power to reject burdensome executory contracts if, despite choosing to reject, they were nonetheless saddled with an administrative expense corresponding to the burdensome obligation they sought to avoid, and sections 365(g) and 502(g) collectively work together to avoid that result, and to avoid the resulting prejudice to other creditors. Thus, by statute and caselaw, the damages for breach—including for failures to satisfy future obligations under the

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rejected contracts—gave rise to pre-petition, general unsecured, claims."); *In re Spectrum Info. Techs., Inc.*, 193 B.R. 400, 403–04 (Bankr. E.D.N.Y. 1996) ("The significance of rejection of an executory contract is that it not only relieves the estate of burdensome future obligations but it also gives rise to a prepetition general unsecured claim for damages rather than an administrative expense priority.").

Here, the Court authorized the Debtor to reject the EMS Agreement, with such rejection effective as of midnight on October 31, 2016. Pursuant to § 365(g)(1), rejection of the EMS Agreement constituted a breach of such agreement "immediately before the date of the filing of the petition." Pursuant to § 502(g), JSE's claim arising from this prepetition breach must be determined and allowed "the same as of such claim had arisen before the date of the filing of the petition." Said another way, JSE is entitled only to a general unsecured claim, and not an administrative expense claim, on account of the breach.

JSE acknowledges that it purchased tail coverage after the EMS Agreement was rejected. This acknowledgment provides further support to the Court's determination that JSE is not entitled to an administrative expense claim on account of its purchase of tail coverage. Because the tail coverage was purchased only after JSE was no longer providing services to the estate under the EMS Agreement, JSE cannot show that the tail coverage directly and substantially benefitted the estate.

The Liquidating Trustee's objection to JSE's administrative expense claim is sustained. JSE's \$152,832.00 administrative expense claim is disallowed in its entirety.

As discussed above, JSE would be entitled to a prepetition general unsecured claim on account of the rejection of the EMS Agreement, provided that it timely filed a Proof of Claim. The *Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case* [Doc. No. 301] (the "Bar Date Notice") provided that the deadline for filing a claim arising from the rejection of an executory contract was the later of the general unsecured claims bar date or thirty days after the date of entry of an order authorizing rejection of the executory contract. The deadline for JSE to file a claim based on the rejection of the EMS Agreement was November 30, 2016 (thirty days after entry of the order authorizing the Debtor to reject the EMS Agreement). Because JSE did not timely file such a Proof of Claim, the Court declines to recharacterize JSE's administrative expense claim as a general unsecured claim.

B. The Liquidating Trustee's Objection to Fujifilm's Administrative Expense Claim is Sustained

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As set forth above, "[t]he burden of proving an administrative expense claim is on the claimant." *Microsoft Corp. v. Dak Indus., Inc. (In re DAK Indus., Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995). To be entitled to an administrative expense, the claimant must show that the administrative expense "(1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity ... and (2) directly and substantially benefitted the estate.... In order to keep administrative costs to the estate at a minimum, 'the actual, necessary costs and expenses of preserving the estate,' § 503(1)(A), are construed narrowly." *Id.* (internal citations omitted).

The Court finds that with respect to the period after the Hospital closed, Fujifilm has failed to carry its burden of establishing that the Service Contract "directly and substantially benefitted the estate." In reaching this conclusion, the Court makes no findings with respect to the disputed issue of when the Service Contract was terminated. The Court need not make any such finding, because even if the Service Contract was not terminated until May 16, 2017, as Fujifilm alleges, Fujifilm still has not shown that the Service Contract benefitted the estate.

After the Hospital closed, the medical equipment that was the subject of the Service Contract was no longer in use, and therefore was no longer at risk of damage. Thus, contrary to Fujifilm's contention, the "insurance" allegedly provided by Service Contract was of no benefit to the estate. Insurance was unnecessary; the unused equipment no longer required emergency repairs or replacement parts. Nothing in Fujifilm's declaration in support of its Opposition to the Motion indicates that Fujifilm performed any repairs on any of the equipment subsequent to the Hospital's closure.

The Liquidating Trustee's objection to Fujifilm's administrative expense claim is sustained. Fujifilm is not entitled to an administrative expense claim for the period subsequent to February 1, 2017. Accordingly, Fujifilm's administrative expense claim is reduced from \$29,184.75 to \$8,352.61.

C. The Liquidating Trustee's Objection to Accent Card Services, Inc.'s Administrative Expense Claim is Sustained

Accent Card Services, Inc. ("Accent") asserts an administrative expense claim of \$5,333.65. In support of its claim, Accent attaches invoices dated July 26, 2015 through December 16, 2015. The Liquidating Trustee objects, pointing out that the invoices predate the filing of the petition.

The Liquidating Trustee's objection is sustained. The Debtor sought bankruptcy protection on June 6, 2016. Accordingly, Accent is not entitled to an administrative

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priority claim.

The Court declines to recharacterize Accent's claim as a general unsecured claim, because the claim was not filed prior to the general claims bar date. (However, to the extent that the Debtor has scheduled Accent as holding a general unsecured claim that is not disputed, contingent, or unliquidated, Accent is entitled to a general unsecured claim pursuant to Bankruptcy Rule 3003(c).)

D. The Liquidating Trustee's Objection to Administrative Services Cooperative, Inc.'s Administrative Expense Claim is Sustained

Administrative Services Cooperative, Inc. ("Administrative Services") asserts an administrative expense claim of \$3,286.05. All of the invoices attached in support of Administrative Services' claim predate the Petition Date, except for invoices dated between November 30, 2016 through January 20, 2017. The Liquidating Trustee objects to according administrative priority status to services performed prior to the Petition Date.

The Liquidating Trustee's objection is sustained. Administrative Services is entitled to an administrative claim only on account of invoices for services performed subsequent to the Petition Date. The total amount of such invoices is \$190.60.

The Court declines to recharacterize the balance of Administrative Services' claim as a general unsecured claim, because the claim was not filed prior to the general claims bar date. (However, to the extent that the Debtor has scheduled Administrative Services as holding a general unsecured claim that is not disputed, contingent, or unliquidated, Administrative Services is entitled to a general unsecured claim pursuant to Bankruptcy Rule 3003(c).)

E. The Liquidating Trustee's Objection to American National Red Cross' Administrative Expense Claim is Sustained

American National Red Cross (the "Red Cross") asserts an administrative expense claim of \$29,520.00.

On May 16, 2018, the Red Cross entered into a *Payment Agreement and Release* (the "Agreement"). In the Agreement, the Red Cross agreed to accept a one-time cash payment of \$13,700.00 in full and final satisfaction of all its post-petition claims. The Liquidating Trustee asserts that the payment required by the Agreement was made on May 18, 2018, and that accordingly the Red Cross' claim has been satisfied in full.

The Liquidating Trustee's objection is sustained. Because the Red Cross' administrative claim has been satisfied, it is disallowed in its entirety.

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F. The Liquidating Trustee's Objection to BETA Risk Management Authority's Administrative Expense Claim is Sustained

BETA Risk Management Authority ("BETA") asserts an unliquidated administrative expense claim for deductibles for open claims under a *Healthcare Liability Coverage Contract* (the "Contract"). According to BETA's Proof of Claim (Claim No. 301), BETA provides healthcare liability coverage under the Contract, and the Debtor is obligated to pay BETA a deductible of up to \$25,000 per claim.

The Liquidating Trustee objects to BETA's claim. The Liquidating Trustee asserts that BETA has failed to meet its burden of showing that its claim is for an actual and necessary cost of preserving the estate, because BETA did not attach the Contract to its Proof of Claim, failed to show that the Debtor has a postpetition (as opposed to prepetition) obligation to pay the deductibles, and failed to supply evidence showing the extent to which the Debtor actually owes deductibles on specific claims.

"The burden of proving an administrative expense claim is on the claimant." *Microsoft Corp. v. Dak Indus., Inc. (In re DAK Indus., Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995). To be entitled to an administrative expense, the claimant must show that the administrative expense "(1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity ... and (2) directly and substantially benefitted the estate." *Id.* (internal citations omitted).

By failing to attach the Contract to its Proof of Claim, failing to show that the Debtor has a postpetition obligation to pay the deductibles, and failing to supply evidence establishing the extent to which the Debtor owes deductibles on specific claims, BETA has not carried its burden of showing that its alleged administrative expense claim directly and substantially benefitted the estate. Accordingly, the Liquidating Trustee's objection is sustained, and BETA's administrative expense claim is disallowed.

The Court declines to recharacterize BETA's claim as a general unsecured claim, because the claim was not filed prior to the general claims bar date. (However, to the extent that the Debtor has scheduled BETA as holding a general unsecured claim that is not disputed, contingent, or unliquidated, BETA is entitled to a general unsecured claim pursuant to Bankruptcy Rule 3003(c).)

G. The Liquidating Trustee's Objection to Butler Chemicals Inc.'s Administrative Expense Claim is Sustained

Butler Chemicals, Inc. ("Butler") asserts an administrative expense claim of

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\$3,861.96. All of the invoices supporting Butler's claim indicate that Butler shipped goods to the Debtor prior to the Petition Date.

The Liquidating Trustee notes that one invoice reflects that Butler shipped goods to the Debtor on June 2, 2016, four days prior to the Petition Date. The Trustee argues that even if the portion of Butler's claim related to the June 2, 2016 invoice could be construed as a § 503(b)(9) claim, such claim should be disallowed as untimely.

The Liquidating Trustee's objection is sustained. The goods shipped by Butler on June 2, 2016 could conceivably give rise to a § 503(b)(9) claim. However, the deadline to file § 503(b)(9) claims was October 31, 2016. Butler did not file its claim until August 10, 2018. Therefore, even if Butler was entitled to assert a § 503(b)(9) claim on account of the June 2, 2016 shipment, such claim is time barred.

The remainder of the invoices supporting Butler's claim pertain to pre-petition shipments that would not give rise to a § 503(b)(9) claim even if the claim had been filed timely. Butler is not entitled to an administrative claim on account of goods shipped prepetition.

Butler's administrative expense claim is disallowed in its entirety. The Court declines to recharacterize Butler's administrative claim as a general unsecured claim, because the claim was not filed prior to the general claims bar date. (However, to the extent that the Debtor has scheduled Butler as holding a general unsecured claim that is not disputed, contingent, or unliquidated, Butler is entitled to a general unsecured claim pursuant to Bankruptcy Rule 3003(c).)

H. The Liquidating Trustee's Objections to Derek Dobalian's Administrative Expense Claims are Sustained

Derek Dobalian ("Dobalian") asserts two administrative expense claims of \$90,000 (Claim Nos. 297 and 298).

In November 2017, Dobalian executed a *Payment Agreement and Release* (the "Agreement"). In the Agreement, Dobalian agreed to accept a one-time cash payment of \$3,000.00 in full and final satisfaction of all his post-petition claims. The Liquidating Trustee asserts that the payment required by the Agreement was made on December 21, 2017, and that accordingly Dobalian's claims have been satisfied in full.

The Liquidating Trustee's objections are sustained. Because Dobalian's administrative expense claims have been satisfied, the claims are disallowed in their entirety.

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I. The Liquidating Trustee's Objections to the Employment Development Department's Administrative Expense Claims are Sustained

The Employment Development Department (the "EDD") asserts administrative expense claims of \$564,720.90 (Claim No. 289) and \$251,014.94 (Claim No. 306).

On March 20, 2018, the Court approved a settlement between the Debtor and the EDD. Doc. Nos. 1124 and 1139. Under the settlement, the EDD agreed to accept \$259,061.00 in full and final satisfaction of all its post-petition claims. The Liquidating Trustee asserts that the payment required by the settlement was made on March 27, 2018.

The Liquidating Trustee's objections are sustained. Because the EDD's administrative expense claims have been satisfied, they are disallowed in their entirety.

J. The Liquidating Trustee's Objection to Iron Mountain Information Management, LLC's Administrative Expense Claim is Sustained

Iron Mountain Information Management, LLC ("Iron Mountain") asserts an administrative expense claim of \$8,611.76, consisting of \$7,109.03 on account of services invoiced post-petition and \$1,502.73 on account of accrued interest on its unpaid invoices. The Liquidating Trustee objects to Iron Mountain's claim to the extent that Iron Mountain asserts an entitlement to post-petition interest.

The Liquidating Trustee's objection is sustained. The Ninth Circuit has held that because "post-petition interest is given the lowest priority in distribution under § 726, the general rule is that interest on post-petition debts is not available in bankruptcy." *Elliott v. Four Seasons Properties (In re Frontier Properties, Inc.)*, 979 F.2d 1358, 1366–67 (9th Cir. 1992). The portion of Iron Mountain's administrative expense claim attributable to post-petition interest is disallowed. Consequently, Iron Mountain's administrative expense claim is reduced from \$8,611.76 to \$7,109.03.

K. The Liquidating Trustee's Objection to Jaken Medical, Inc.'s Administrative Expense Claim is Sustained

Jaken Medical, Inc. ("Jaken") asserts an administrative expense claim of \$4,771.54. Jaken's Proof of Claim states that its claim arose prior to the Petition Date. The invoice attached to the Proof of Claim also indicates that the claim arose prior to the Petition Date. The Liquidating Trustee objects to according administrative priority status to services performed prior to the Petition Date.

The Liquidating Trustee's objection is sustained. Jaken's administrative expense

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claim (Claim No. 294) is disallowed in its entirety. The disallowance of Claim No. 294 has no impact on Claim No. 100, Jaken's general unsecured claim.

L. The Liquidating Trustee's Objection to Cynthia Miller-Dobalian's Administrative Expense Claim is Sustained

Cynthia Miller-Dobalian ("Miller-Dobalian") asserts an administrative expense claim of \$116,000.

In November 2017, Miller-Dobalian executed a *Payment Agreement and Release* (the "Agreement"). In the Agreement, Miller-Dobalian agreed to accept a one-time cash payment of \$17,000.00 in full and final satisfaction of all her post-petition claims. The Liquidating Trustee asserts that the payment required by the Agreement was made on December 21, 2017, and that accordingly Miller-Dobalian's claims have been satisfied in full.

The Liquidating Trustee's objections is sustained. Because Miller-Dobalian's administrative expense claim has been satisfied, the claim is disallowed in its entirety.

M. The Liquidating Trustee's Objection to MSS Nurses Registry, Inc.'s Administrative Expense Claim is Sustained

MSS Nurses Registry, Inc. ("MSS") asserts an administrative expense claim of \$22,610.75. MSS' Proof of Claim form states that its claim arose prior to the Petition Date. The Liquidating Trustee objects to according administrative priority status to services performed prior to the Petition Date.

The Liquidating Trustee's objection is sustained. MSS' administrative expense claim (Claim No. 291) is disallowed in its entirety. The disallowance of Claim No. 291 has no impact on Claim No. 37, MSS' general unsecured claim.

N. The Liquidating Trustee's Objection to Nuance Communications, Inc.'s Administrative Expense Claim is Sustained

Nuance Communications, Inc. ("Nuance") asserts an administrative expense claim of \$60,007.78, consisting of \$45,789.93 on account of services invoice post-petition and \$14,217.85 on account of accrued interest and late fees on its unpaid invoices. The Liquidating Trustee objects to Nuance's claim to the extent that Nuance asserts an entitlement to post-petition interest.

The Liquidating Trustee's objection is sustained. The Ninth Circuit has held that because "post-petition interest is given the lowest priority in distribution under § 726, the general rule is that interest on post-petition debts is not available in bankruptcy."

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Elliott v. Four Seasons Properties (In re Frontier Properties, Inc.), 979 F.2d 1358, 1366–67 (9th Cir. 1992). The portion of Nuance’s administrative expense claim attributable to post-petition interest and late fees is disallowed. Consequently, Nuance’s administrative expense claim is reduced from \$60,007.78 to \$45,789.93.

O. The Liquidating Trustee’s Objection to Manuel Ramirez’s Administrative Expense Claim is Sustained

Manuel Ramirez ("Ramirez") asserts an administrative expense claim of \$5 million. Ramirez alleges that he sustained injuries from spinal surgery performed on August 12, 2015.

The Liquidating Trustee contends that the claim is not entitled to administrative expense status because the alleged injury occurred prepetition. Further, the Liquidating Trustee notes that according to the Complaint attached to the Proof of Claim, the surgery which allegedly caused the injury was performed at a hospital in Riverside, not at the hospital operated by the Debtor.

The Liquidating Trustee’s objection is sustained. Because the alleged injury resulted from a surgery performed prepetition, the claim is not entitled to administrative status. Nor is Ramirez entitled to a general unsecured claim against the Debtor, because the surgery which resulted in the alleged injury was not performed at the hospital operated by the Debtor. Further, the Debtor is not named as a defendant in the Complaint, and is not identified as a defendant under any of the Complaint’s eight causes of action.

P. The Liquidating Trustee’s Objection to Suture Express, Inc.’s § 503(b)(9) Claim is Sustained

Suture Express, Inc. ("Suture") asserts a § 503(b)(9) claim of \$8,882.23 for "goods sold" and "medical supplies delivered and received by Debtor on 6/2/2015" The invoices attached to Suture’s Proof of Claim indicate that the goods were delivered well outside the 20-day prior to the Petition Date. Accordingly, the Liquidating Trustee asserts that Suture’s claim is not entitled to administrative status.

The Liquidating Trustee’s objection is sustained. Because Suture’s claim was filed prior to the general claims bar date, the Court will recharacterize the claim as a general unsecured claim.

Q. The Liquidating Trustee’s Objection to Anna Thorstad’s Administrative Expense Claim is Sustained

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Anna Thorstad ("Thorstad") asserts an administrative expense claim of \$3,764.99 (Claim No. 303) on account of paid-time off ("PTO"). The Liquidating Trustee contends that the claim is not entitled to administrative expense status because the PTO accrued prepetition.

The Liquidating Trustee's objection is sustained and the administrative expense claim is disallowed. Disallowance of Claim No. 303 will have no impact on Claim No. 287, Thorstad's priority wage claim for the same prepetition PTO.

R. The Liquidating Trustee's Objection to Universal Metro, Inc.'s Administrative Expense Claim is Sustained

Universal Metro, Inc. ("Universal") asserts an administrative expense claim of \$11,540.66. Universal's Proof of Claim form states that its claim arose between 2014 and 2016. The invoices attached to Universal's Proof of Claim predate the Petition Date, except for a single invoice dated December 1, 2016 in the amount of \$931.00. The Liquidating Trustee objects to according administrative expense status to services performed prior to the Petition Date.

The Liquidating Trustee's objection is sustained. Universal is not entitled to an administrative claim on account of services performed prior to the Petition Date. Universal is entitled to an administrative claim only on account of services performed subsequent to the Petition Date. The total amount of Universal's invoices for post-petition services is \$931.00. Therefore, Universal holds an administrative claim of \$931.00.

The Court declines to recharacterize the balance of Universal's administrative claim as a general unsecured claim, because the claim was not filed prior to the general claims bar date. (However, to the extent that the Debtor has scheduled Universal as holding a general unsecured claim that is not disputed, contingent, or unliquidated, Universal is entitled to a general unsecured claim pursuant to Bankruptcy Rule 3003(c).)

S. The Liquidating Trustee's Objection to Waste Management Healthcare Solutions' Administrative Expense Claim is Sustained

Waste Management Healthcare Solutions ("Waste Management") asserts an administrative expense claim of \$10,077.30, consisting of \$9,822.00 on account of services invoice post-petition and \$255.30 on account of accrued interest and late fees on its unpaid invoices. The Liquidating Trustee objects to Waste Management's claim to the extent that Waste Management asserts an entitlement to post-petition interest.

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The Liquidating Trustee's objection is sustained. The Ninth Circuit has held that because "post-petition interest is given the lowest priority in distribution under § 726, the general rule is that interest on post-petition debts is not available in bankruptcy." *Elliott v. Four Seasons Properties (In re Frontier Properties, Inc.)*, 979 F.2d 1358, 1366–67 (9th Cir. 1992). The portion of Waste Management's administrative expense claim attributable to post-petition interest and late fees is disallowed. Consequently, Waste Management's administrative expense claim is reduced from \$10,077.30 to \$9,822.00.

III. Conclusion

The Liquidating Trustee's claim objections are sustained to the extent set forth above. The Liquidating Trustee shall submit a conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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#3.00 HearingRE: [143] Motion Trustee's Notice Of Motion And Motion For Approval Of Final Distributions From Proceeds of Sale of Community Property; Memorandum Of Points And Authorities, Request For Judicial Notice, And Declaration Of Brad D. Krasnoff In Support Thereof with Proof of Service (Shechtman, Zev)

Docket 143

Tentative Ruling:

3/5/2019

Based upon the foregoing, the Trustee's Motion to Intervene is GRANTED. The Court will dismiss the Complaint's claim for declaratory relief for failure to state a claim upon which relief can be granted. The Trustee's Second Disbursement Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion to Intervene:
 - a) Chapter 7 Trustee's Notice of Motion and Motion to Intervene in Adversary Proceeding Pursuant to FRBP 7024 [Adv. Doc. No. 20] (the "Motion to Intervene") [**Note 1**]
 - b) Plaintiff's Opposition to Chapter 7 Trustee's Motion to Intervene [Adv. Doc. No. 24]
 - c) Chapter 7 Trustee's Reply Memorandum of Points and Authorities in Support of Motion to Intervene in Adversary Proceeding Pursuant to FRBP 7024 [Adv. Doc. No. 26]
 - i) Evidentiary Objections to Declaration of Ronald Peterson Filed with Plaintiff's Opposition to Chapter 7 Trustee's Motion to Intervene [Adv. Doc. No. 28]
- 2) Chapter 7 Trustee's Motion to Dismiss:
 - a) Chapter 7 Trustee's Notice of Motion and Motion to Dismiss First Cause of Action in Ronald Peterson's First Amended Complaint, for Failure to State a Claim Upon Which Relief May Be Granted Under FRCP 12(b)(6) [Adv. Doc. No. 21] (the "Motion to Dismiss")
 - b) Plaintiff's Opposition to Chapter 7 Trustee's Motion to Dismiss First Cause of

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Action [Adv. Doc. No. 25]

- c) Chapter 7 Trustee's Reply Memorandum of Points and Authorities in Support of Motion to Dismiss First Cause of Action in Ronald Peterson's First Amended Complaint, for Failure to State a Claim Upon Which Relief May Be Granted Under FRCP 12(b)(6) [Adv. Doc. No. 27]
 - i) Evidentiary Objections to Declaration of Ronald Peterson Filed with Plaintiff's Opposition to Chapter 7 Trustee's Motion to Dismiss [Adv. Doc. No. 29]
- 3) Chapter 7 Trustee's Motion to Approve Final Distribution of Sale Proceeds:
 - a) Trustee's Notice of Motion and Motion for Approval of Final Distributions from Proceeds of Sale of Community Property [Bankr. Doc. No. 143]
 - i) Notice of Trustee's Motion for Approval of Final Distributions from Proceeds of Sale of Community Property [Bankr. Doc. No. 144]
 - b) Ronald Peterson's Opposition to Chapter 7 Trustee's Motion for Approval of Final Distribution from Proceeds of Sale of Community Property [Bankr. Doc. No. 147]
 - c) Debtor's Response to Motion for Approval of Final Distributions from Proceeds of Sale of Community Property [Bankr. Doc. No. 148]
 - d) Trustee's Reply Memorandum of Points and Authorities in Support of Motion for Approval of Final Distributions from Community Property Proceeds [Bankr. Doc. No. 149]
 - i) Evidentiary Objections to Declaration of Ronald Peterson Filed with Ronald Peterson's Opposition to Chapter 7 Trustee's Motion for Approval of Final Distribution from Proceeds of Sale of Community Property [Bankr. Doc. No. 151]
 - e) Trustee's Reply to Response of Debtor Re: Motion for Approval of Final Distributions from Community Property Proceeds [Bankr. Doc. No. 150]

I. Facts and Summary of Pleadings

A. Background

To provide context for the findings made herein, the Court describes the history of this case and its prior rulings in detail.

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

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The Debtor was married to Ronald Peterson ("Ronald") [Note 2] from 1997 to 2010. Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Chapter 7 Trustee (the "Trustee") of undisclosed assets, and the Debtor's case was reopened.

1. The Trustee's Complaint and Ronald's Purported Cross-Complaint

On January 22, 2018, the Chapter 7 Trustee (the "Trustee") filed the *Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Violation of Automatic Stay; and (5) For Dissolution of Limited Liability Company* [Adv. Doc. No. 21] (the "Turnover Complaint") against Ronald Peterson ("Ronald") and two limited liability companies—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Turnover Complaint sought a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Turnover Complaint sought turnover of the Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

On February 26, 2018, Ronald, Maitreya Nevada, and Maitreya Arizona filed an Answer to the Turnover Complaint. Adv. Doc. No. 42. The Answer asserted four affirmative defenses but did not assert any counterclaims.

On June 7, 2018, the Court conducted a hearing on the Trustee's motion for summary judgment (the "MSJ") on the Turnover Complaint's first, third, and fifth claims for relief. On June 6, 2018—the day prior to the hearing on the MSJ—the Court posted, at 12:20 p.m., a tentative ruling indicated its intent to grant the MSJ. Approximately eleven hours later, at 11:03 p.m., Ronald filed a *Cross-Complaint for: (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; and (4) Negligence* [Bankr. Doc. No. 64; Adv. Doc. No. 66] (the "Purported Cross-Complaint") [Note 3] against the Trustee and the Debtor.

On June 14, 2018, the Court entered summary judgment, in the Trustee's favor, on the Turnover Complaint's first, third, and fifth claims for relief. Adv. Doc. No. 64 (the "Judgment"). Among other things, the Judgment provided that the Property is

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"community property of the Debtor and Ronald," and further provided that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)" Judgment at ¶¶2-3. The Court found that the filing of the Purported Cross-Complaint was not cause to delay entry of the Judgment. In addition, the Court found, pursuant to Civil Rule 54(b), that there was no just reason to delay entry of final judgment in the Trustee's favor with respect to the first, third, and fifth claims for relief. The Court ordered the Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Judgment at ¶5.

Defendants failed to turnover the Property to the Trustee as ordered by the Court. On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment (the "Motion for Reconsideration"). See Memorandum of Decision Denying Motion for Reconsideration [Adv. Doc. No. 96] and Order Denying Motion for Reconsideration [Adv. Doc. No. 97]. In the Motion for Reconsideration, Defendants asserted that the only claims filed in the Debtor's bankruptcy case were on account of debts the Debtor incurred after she separated from Ronald. Defendants maintained that as a result, the claims were not payable from property of the estate because they did not qualify as "community claims" within the meaning of §101(7). Defendants' theory was that the absence of any creditors entitled to receive a distribution from the estate precluded the Trustee from administering estate property. In denying the Motion for Reconsideration, the Court noted that Defendants had been provided an opportunity to present their arguments before the Court entered the Judgment, but had failed to do so. Observing that Defendants had offered no explanation whatsoever for their failure to timely raise these arguments, the Court determined that the "extraordinary circumstances" necessary to support reconsideration were not present. See *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007).

Concurrently with the denial of the Motion for Reconsideration, the Court directed the Clerk of the Court to issue a Writ of Possession, authorizing the United States Marshal (the "U.S. Marshal") to enforce the Judgment by placing the Trustee in possession of the Property. Adv. Doc. No. 98. On August 10, 2018, the U.S. Marshal evicted Ronald, his fiancée, and their two children from the Property.

On July 26, 2018, Ronald appealed the Court's denial of his Motion to Reconsideration to the District Court. Adv. Doc. No. 110. On November 16, 2018, the District Court dismissed Ronald's appeal with prejudice for failure to prosecute. Adv. Doc. No. 145.

The Purported Cross-Complaint filed by Ronald on the eve of the summary

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judgment hearing alleged, among other things, that Ronald and the Trustee had entered into a contract providing that Ronald would purchase the estate's interest in the Property for \$125,000, but that the Trustee breached the contract notwithstanding Ronald's fulfillment of all his obligations thereunder. Purported Cross-Complaint at ¶¶30–33. [Note 4]

On June 18, 2018, the Court issued an order requiring Ronald to appear and show cause why the Court should not (1) construe the Purported Cross-Complaint as a Counter-Complaint, (2) find that the claims asserted in the Counter-Complaint are compulsory, and (3) dismiss the Counter-Complaint as untimely. Adv. Doc. No. 69. In its *Preliminary Findings and Conclusions*, the Court first found that the Purported Cross-Complaint was more properly characterized as a Counter-Complaint, because it sought relief against an opposing party (the Trustee), not a co-party. The Court next found that the claims asserted in the Purported Cross-Complaint were compulsory counterclaims, because they arose from the same set of operative facts as the claims asserted in the Complaint.

On July 27, 2018, the Court entered an order adopting its *Preliminary Findings and Conclusions* and dismissing the Purported Cross-Complaint, as to the Trustee, with prejudice. Adv. Doc. No. 113 (the "Dismissal Order"). The Dismissal Order is now final and non-appealable.

2. Ronald's Claim Objections

On August 16, 2018, the Court overruled Ronald's objections to Proofs of Claim filed by Shaco, Inc. ("Shaco") and Kathy K. Settle ("Ms. Settle"). The Court found that Ronald's claim objections were an improper attempt to gain a litigation advantage in the adversary proceeding brought by the Trustee:

In his Claim Objections, Ronald asserts that the claims do not qualify as "community claims" and therefore may not be paid from the estate's community property. The estate's primary community property asset is the Property. As discussed above, Ronald has vigorously contested the Trustee's attempts to enforce the Judgment and gain possession of the Property. Ronald's objective in prosecuting the Claim Objections is to prevent the Trustee from enforcing the Judgment.

Ronald raised the arguments he asserts now in his motion for Reconsideration of the Judgment. In denying Ronald's Motion for Reconsideration, the Court found that Ronald had failed to show that

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"extraordinary circumstances" excused his failure to timely raise his arguments regarding the allowability of the claims. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Based upon this finding, the Court refused to consider the arguments. Ronald cannot procedurally circumvent the Court's determination by now seeking to present these identical arguments in a different context.

The Court declines to find that Ronald lacks standing to object to the claims. It would be more precise to say that the Ronald has interposed the Claim Objections for the improper purpose of attempting to escape the consequences of his failure to timely raise the arguments he now presents. Had Ronald timely raised these arguments in opposition to the Trustee's motion for summary judgment, they would have been properly before the Court. But raising the arguments now—after the Court's express determination that the arguments would not be considered because they were untimely—is not proper.

Final Ruling Overruling Objection to Claim Number 2 [Bankr. Doc. No. 81] at 4–5.
[Note 5]

The Court went on to find that even had Ronald's claim objections been properly before it, the objections lacked merit. With respect to Ronald's argument that the Trustee was barred from administering any of the estate's community property because there were no creditors eligible to receive a distribution from such property, the Court stated:

Where an estate includes community property, distribution of such property is governed by §726(c). Section 726(c) provides a framework for the distribution of community property to holders of community claims.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [estate community property], whether or not there is any such property at the time of the commencement of the case." §101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and

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control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Court assumes without deciding that the indebtedness asserted by the claimants was incurred by the Debtor after she separated from Ronald. As such, the claims would not constitute community claims.

To provide for the distribution of community property, §726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

The distribution contemplated by the Trustee is consistent with the § 726(c). First, the Trustee will liquidate the Property, the estate's primary community asset. Once the Property has been liquidated, costs of administration will be paid from cash on hand. Subsequent to the payment of costs of administration, the remaining funds will be divided in half, with one half allocable to the Debtor, and the other allocable to Ronald. Once the remaining funds have been divided, the Debtor's share of such funds will no longer constitute community property. Instead, such funds will be property of the estate liable for separate property claims against the Debtor—such as the claims asserted by Shaco and Settle (provided that such claims are in fact properly characterized as separate property claims). Such funds may be distributed to the claimants pursuant to §726(c)(2)(C).

Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), *aff'd sub nom. Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10. The precise manner in which funds will be distributed is not yet before the Court. However, contrary to Ronald's contention, funds can be distributed to claimants in a manner consistent with §726(c) and other applicable provisions of the Bankruptcy Code.

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Id. at 5–7.

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3. The Trustee's Sale Motion and Ronald's Assertion of a Homestead Exemption

On December 6, 2018, the Court approved, over Ronald's opposition, the Trustee's motion to confirm the sale of the Property to Jose Mclat and Cristina Criss (the "Sale Motion"). Bankr. Doc. Nos. 119–20. Although the sale was free and clear of liens, the Court found that the Debtor's spousal support lien in the principal amount of \$61,474 would attach only to Ronald's share of the net sale proceeds, subject to a further ruling determining the extent of Ronald's share.

In opposition to the Sale Motion, Ronald contended that the Trustee was required to pay him 50% of the sales proceeds directly from escrow on account of Ronald's purported \$100,000 homestead exemption in the Property. The Court rejected Ronald's contention, finding that it was not procedurally proper for Ronald to assert his alleged entitlement to a homestead exemption by way of an opposition to the Sale Motion. The Court further noted that where, as here, the Debtor had claimed exemptions, a non-debtor spouse such as Ronald was not necessarily entitled to assert supplemental exemptions. The Court stated that it would determine the validity of any homestead exemption asserted by Ronald if and when Ronald properly filed a claim of exemption.

On December 29, 2011, Debtor filed Schedule C, claiming various property as exempt. Bankr. Doc. No. 11. Debtor did not assert an exemption in the Property. On February 1, 2012, Debtor filed an Amended Schedule C, but again did not assert an exemption in the Property. Bankr. Doc. No. 15. On December 14, 2018, Ronald filed a Schedule C, pursuant to §522(1), asserting a \$100,000 exemption in the Property.

4. The Trustee's Interim Fee Application and Motion for Authorization to Pay Administrative Expenses from Community Property Proceeds Held by the Estate

On December 21, 2018, the Court awarded Danning, Gill, Diamond & Kollitz LLP ("DGDK"), the Trustee's general bankruptcy counsel, fees of \$152,611.00 and expenses of \$9,598.10, on an interim basis. Bankr. Doc. No. 131. Over Ronald's opposition, the Court authorized the Trustee to pay DGDK's allowed fees and expenses from the proceeds of the sale of the Property (the "Sale Proceeds"). Bankr. Doc. No. 130.

The Court found that payment of DGDK's allowed fees and expenses from the Sale Proceeds was consistent with § 726(c)(1):

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Section 726(c)(1) provides that administrative expense claims shall be paid either from community property of the estate, or from other property of the estate, "as the interest of justice requires." The legislative history contains specific examples of how this may be done:

First, administrative expenses are to be paid, as the court determines on any reasonable equitable basis, from both kinds of property. The court will divide administrative expenses according to such factors as the amount of each kind of property in the estate, the cost of preservation and liquidation of each kind of property, and whether any particular administrative expenses are attributable to one kind of property or the other.

House and Senate Reports to Bankruptcy Reform Act of 1978 (H.R. Rep. No. 595, 95th Cong., 1st Sess. 383–384 (1977); S. Rep. No. 989 95th Cong., 2d Sess. 97–98 (1978)).

Here, all property held by the estate is community property. The Court finds that the interests of justice permit payment of the estate's administrative expenses from community property. The vast majority of administrative costs were incurred in connection with the Trustee's fraudulent transfer litigation against Ronald, the Trustee's efforts to enforce the Judgment against Ronald, and other litigation made necessary as a result of actions taken by Ronald. As set forth above, the Court found that all the arguments asserted by Ronald lacked merit. Under the circumstances, it does not offend the interests of justice for the Trustee to first pay administrative costs from the estate's community property proceeds before distributing to Ronald his *pro rata* share of such proceeds, even though such a distribution will reduce the funds that Ronald ultimately receives.

Final Ruling Granting Trustee's Motion for Authorization to Pay Administrative Expenses from Sale Proceeds [Bankr. Doc. No. 128] at 10.

The Court overruled Ronald's contention that he was entitled to receive his *pro rata* share of the estate's community property prior to payment of the costs of administration. In support of his position, Ronald asserted that he was entitled to a \$100,000 homestead exemption in the Property, based upon a Schedule C that Ronald filed on December 14, 2018. The Court found that Ronald was not entitled to assert a

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homestead exemption:

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Section 522(l) provides:

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

Ronald is not entitled to assert an exemption on the Debtor's behalf pursuant to §522(l). First, a claim of exemption asserted under §522(l) must be filed within 44 days of the date of the petition. Bankruptcy Rule 4003(a). Here, the petition was filed on December 14, 2011. Ronald did not file a claim of exemption until approximately seven years later, well beyond the applicable deadline. Second, Ronald may not assert exemptions on the Debtor's behalf because the Debtor did file claims of exemption. The Debtor's failure to exempt the Property does not permit Ronald to supplement the Debtor's exemptions. As explained in *In re Homan*, 112 B.R. 356, 359 (B.A.P. 9th Cir. 1989): "Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions." *See also Kapila v. Morgan (In re Morgan)*, 286 B.R. 678, 683-84 (Bankr. E.D. Wis. 2002) ("Section 522(l) provides that a dependent of the debtor, including the debtor's spouse, whether or not actually dependent, may file a list of claimed exemptions if the debtor fails to do so. However, he did so. Since the right is his alone, she may not supplement that list, even if she disagrees with his choices."); *In re Duncan*, 294 B.R. 339, 344 (B.A.P. 10th Cir. 2003) (citing *In re Morgan* with approval).

Final Ruling Granting Trustee's Motion for Authorization to Pay Administrative Expenses from Sale Proceeds [Bankr. Doc. No. 128] at 12–13.

5. Ronald's Filing of the Complaint and Ronald's Dismissal of the Purported Cross-

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Complaint

On January 12, 2019, Ronald filed a *First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6)* (the "Complaint") against the Debtor. First, Ronald alleges that the Debtor is not entitled to receive any of the Sale Proceeds because she acted in bad faith by deliberately failing to schedule the Property. Complaint at ¶ 24. Ronald seeks a declaration that he is entitled to 100% of the Sale Proceeds. Second, Ronald alleges that the Debtor breached her fiduciary duties to him by, *inter alia*, failing to schedule the Property and failing to schedule Ronald as a creditor. Complaint at ¶¶ 43–52. Third, Ronald alleges that the Debtor is indebted to him on account of her breaches of fiduciary duty, and that such indebtedness is excepted from the Debtor's discharge, pursuant to § 523(a)(4) and (a)(6). Ronald alleges that the dischargeability claims are timely because the Debtor did not schedule him as a creditor and he was therefore unaware of the deadline to commence a dischargeability action. The Complaint does not name the Trustee as a defendant.

On February 15, 2019, the Court granted Ronald's motion to dismiss the Purported Cross-Complaint. Adv. Doc. No. 150. Ronald sought the dismissal because he intended to pursue his claims against the Debtor by way of the Complaint.

B. Summary of Papers filed in Connection with the Trustee's Motion to Intervene in the Declaratory Relief Complaint and the Trustee's Motion to Dismiss the Declaratory Relief Complaint

The Trustee moves to intervene in the Complaint, as of right, pursuant to Civil Rule 24(a)(2). The Trustee asserts that intervention is appropriate because the relief sought in the Complaint is inconsistent with the Trustee's administration of the estate and the prior orders of the Court.

In Opposition to the Motion to Intervene, Ronald does not dispute that the Trustee right to intervene. Ronald asserts that there is no reason for the Trustee to intervene, on the ground that the Trustee should be indifferent as to whether Ronald or the Debtor receives the Sale Proceeds. Ronald maintains that by attempting to intervene, the Trustee is impermissibly advocating on behalf of the Debtor.

In Reply to Ronald's Opposition, the Trustee contends that he is entitled to intervene because he has exclusive authority to vindicate the estate's property rights.

The Trustee moves to dismiss the Complaint's claim for declaratory relief with respect to the distribution of the Sale Proceeds, for failure to state a claim upon which

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relief can be granted, pursuant to Civil Rule 12(b)(6). The Trustee asserts that Ronald's claim that he is entitled to 100% of the Sale Proceeds is barred by *res judicata*. According to the Trustee, the claim for declaratory relief is effectively a claim to estate property, which should have been litigated in connection with the Turnover Complaint.

In Opposition to the Motion to Dismiss, Ronald argues that the Trustee lacks standing because he was not named as a defendant. Ronald argues that even if the Trustee does have standing, the Complaint's allegations that the Debtor concealed the Property from the Trustee in bad faith sufficiently support the relief demanded—namely that Ronald is entitled to all of the Sale Proceeds and that the Debtor is not entitled to any of the Sale Proceeds. Ronald asserts that the Debtor cannot claim any interest in the Sale Proceeds because she did not schedule the Property and did not claim a homestead exemption in the Property. Ronald contends that *res judicata* does not apply, because the Court has never ruled upon the issue of whether the distribution priorities specified in § 726 apply when the Debtor has acted in bad faith.

In Reply to Ronald's Opposition, the Trustee argues that *res judicata* does apply. The Trustee points to the Judgment, which determined that the Property is property of the estate. Therefore, the Trustee argues, the Sale Proceeds of the Property are also property of the estate, and those proceeds are subject to distribution pursuant to the priorities of the Bankruptcy Code.

C. Summary of Papers Filed in Connection with the Trustee's Motion to Approve a Final Distribution of the Sale Proceeds

The Trustee moves to distribute the Sale Proceeds as follows:

- 1) First, all remaining expenses of administration will be paid.
- 2) Second, the remaining funds will be divided in half, one half allocable to the Debtor and the other half allocable to Ronald.
- 3) Third, the Debtor's separate debts will be paid from the half allocable to the Debtor.
- 4) Fourth, Ronald's half will be divided as follows:
 - a) The Debtor's spousal support lien of \$69,186 (plus any additional interest owing as of the date of payment) will be paid in full; and
 - b) The balance will be paid to Ronald.

Prior to the filing of the motion seeking authorization to disburse the remaining

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Sale Proceeds (the "Second Disbursement Motion"), the Trustee sent a written proposal to Ronald and the Debtor in an attempt to resolve issues pertaining to the final disbursement without further litigation. The Trustee advised Ronald and the Debtor that the proposal was not a settlement communication and would be submitted to the Court.

The Trustee's proposal presented Ronald and the Debtor two options. The primary difference between the two options was the treatment of the Debtor's spousal support lien (the "Support Lien"). Under Option A, the Debtor would be paid \$61,474 on account of the Support Lien from Ronald's share, and Ronald would be paid the balance of his share. Under Option B, the Debtor would be paid \$61,474 on account of the Support Lien from Ronald's share, but Ronald would not be paid the balance of his share. Instead, the remaining balance would be paid to an escrow agent and would be subject to final distribution by the Family Court.

Ronald rejected both options, asserting that he was entitled to all of the Sale Proceeds. However, Ronald expressed a preference to be paid his share of the proceeds after payment of the Support Lien in the event that he did not prevail upon his demand to receive all of the Sale Proceeds.

The Debtor does not support either option. The Debtor intends to serve upon Ronald a Rule 9011 motion for sanctions, and to file such motion with the Court, if Ronald does not withdraw the Complaint within the 21-day safe-harbor period specified by Rule 9011(c)(1)(A). The Debtor asserts that the Trustee should be required to hold all the Sale Proceeds until the Rule 9011 Motion is decided, so that the Court will have the ability to impose monetary sanctions against Ronald. In the event that Ronald dismisses the Complaint, the Debtor asserts that Ronald's share of the Sale Proceeds should be held in trust by Ronald's divorce attorney pending the Family Court's resolution of the remaining disputes. The Debtor maintains that Ronald's share of the Sale Proceeds must be held in trust until all the Debtor's claims against him are resolved, to prevent Ronald from improperly disposing of the Sale Proceeds.

By way of the Second Disbursement Motion, the Trustee seeks relief consistent with Option A. The Trustee has concluded that a distribution consistent with Option A provides the most expeditious means of liquidating the estate's property. The Trustee opposes the Debtor's request that Ronald's share of the Sale Proceeds be held in trust pending either the Debtor's filing of a Rule 9011 Motion or the Family Court's resolution of the Debtor's claims against Ronald. The Trustee contends that administration of the estate should not be further delayed by litigation between Ronald

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and the Debtor.

Ronald reiterates his position that he is entitled to all of the Sale Proceeds. First, Ronald contends that the Second Disbursement Motion amounts to an impermissible attempt by the Trustee to circumvent the Complaint. Second, Ronald states that he has filed a motion in the Family Court to modify the Support Lien. On that basis, Ronald opposes payment of the Support Lien from his share of the Sale Proceeds. Third, Ronald contends that, as alleged in the Complaint, the Debtor is not entitled to any of the Sales Proceeds because she concealed the Property from the Trustee in bad faith.

The Trustee disputes Ronald's arguments. According to the Trustee:

- 1) Ronald's Complaint does not dispossess the Bankruptcy Court of its core authority to determine the disposition of property of the estate. The relief sought in the Second Disbursement Motion is necessary to enable the Trustee to complete the administration of the estate.
- 2) Absent an order from the Family Court vacating the Support Lien, there is no basis for Ronald's contention that the Support Lien should not be paid.

II. Findings and Conclusions

A. The Trustee's Motion to Intervene is Granted

Civil Rule 24(a)(2) provides:

On timely motion, the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

An applicant for intervention must make four showings to qualify under Civil Rule 24(a)(2):

- 1) [The applicant] has a 'significant protectable interest' relating to the property or transaction that is the subject of the action;
- 2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest;
- 3) the application is timely; and
- 4) the existing parties may not adequately represent the applicants interest.

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Perry v. Schwarzenegger, 630 F.3d 898, 903 (9th Cir. 2011).

The Trustee has satisfied all four elements and is therefore entitled to intervene in this action as a matter of right. First, the Trustee has a "significant protectable interest" relating to the property that is the subject of the action. The Complaint seeks a determination that Ronald is entitled to receive all of the Sale Proceeds and that the Debtor is entitled to receive none of the Sale Proceeds. The Sale Proceeds are property of the estate that the Trustee is required to distribute in accordance with the requirements of the Bankruptcy Code. *See* § 704(a)(1), (2), and (9) (requiring the Trustee to "collect and reduce to money the property of the estate," to "be accountable for all property received," and to "make a final report and file a final account of the administration of the estate with the court and with the United States trustee"). Because the Complaint affects the distribution of the estate's property, the first element is satisfied.

Second, the disposition of the action will, as a practical matter, impair and impede the Trustee's ability to protect his interest in the estate's property. As stated above, the Trustee has a statutory obligation to distribute the Sale Proceeds consistent with the requirements of the Bankruptcy Code. By seeking to dictate the distribution of the Sale Proceeds, the Complaint impairs the Trustee's ability to fulfill his statutory obligations with respect to the distribution of the estate's property.

Third, the Trustee's application to intervene is timely. The Complaint was filed on January 11, 2019. The Summons and Complaint were not served upon the Trustee. The Trustee applied to intervene on February 13, 2019, early in the proceedings.

Finally, the existing parties—Ronald and the Debtor—will not adequately represent the Trustee's interest. The Trustee has an obligation to distribute the Sale Proceeds in a manner consistent with the Bankruptcy Code. It is in the interests of both Ronald and the Debtor to obtain as much of the Sale Proceeds as possible. **[Note 6]**

There is no merit to Ronald's contention that by seeking to intervene, the Trustee is impermissibly advocating on behalf of the Debtor. In addition, Ronald's assertion that the Trustee should be indifferent as to the distribution of the Sale Proceeds is mistaken. The Trustee has a statutory obligation to distribute the Sale Proceeds in accordance with the requirements of the Bankruptcy Code. If the Trustee were to adopt Ronald's position and remain indifferent as to the distribution of the Sale Proceeds, he would be abandoning the fiduciary obligations imposed upon him by § 704.

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B. The Court Dismisses the Complaint's Claim for Declaratory Relief

The Trustee moves to dismiss Ronald's claim seeking a declaration that the entirety of the Sale Proceeds must be distributed to Ronald. The Trustee's theory is that Ronald's declaratory relief claim is barred by *res judicata*.

"Res judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between the parties." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). An "identity of claims" exists "when two suits arise from 'the same transactional nucleus of facts. Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action." *Id.* at 1078.

The Complaint's theory is that the Debtor's alleged bad faith concealment of the Property requires the Trustee to depart from the distribution scheme set forth in § 726(c). The Trustee is correct that the Judgment has conclusively determined that the Property—and consequently the Sale Proceeds of the Property—constitute community property of the estate. However, the Court does not agree with the Trustee's position that the Judgment precludes Ronald from challenging the Trustee's proposed distribution of the Sale Proceeds. The issue in the Turnover Complaint was whether the Property was property of the estate. The Turnover Complaint did not directly put at issue the manner in which the Trustee was required to distribute the proceeds of the Property's liquidation. During the time the Turnover Complaint was pending, the Trustee had made clear his future plans with respect to the distribution of the Sale Proceeds, but had not yet taken any concrete action. Within the context of the Turnover Complaint, it would not have been feasible for Ronald to challenge the Trustee's distribution of the Sale Proceeds, which at that point was purely hypothetical.

Although *res judicata* does not prevent Ronald from challenging the Trustee's proposed distribution, the Court declines to permit Ronald to pursue this challenge by way of the Complaint. Adjudication of this issue through an adversary proceeding would unduly delay the Trustee's administration of the estate. The issues raised by Ronald are more appropriately adjudicated by way of the Trustee's motion for authorization to distribute the Sale Proceeds (the "Distribution Motion"). Further, Ronald's challenge to the Trustee's proposed distribution does not require the Court to determine any disputed factual issues. As discussed below, even assuming that the allegations set forth in the first claim are true, Ronald is not entitled to the declaratory

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relief he demands as a matter of law. Therefore, the Court will dismiss Ronald's declaratory relief claim, pursuant to Civil Rule 12(b)(6), for failure to state a claim.

C. The Trustee's Motion for Authorization to Distribute the Sale Proceeds is Granted

The Judgment provides that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)" Judgment at ¶¶2-3. It follows that the Sale Proceeds of the Property are also community property of the estate.

Section 726(c) governs the distribution of estate community property. Section 726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

Only two creditors have filed Proofs of Claim against the estate. Shaco, Inc. asserts a claim in the amount of \$122,917.79. Kathy Settle asserts a claim in the amount of \$52,500.00.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [estate community property], whether or not there is any such property at the time of the commencement of the case." §101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Trustee asserts that both claims are post-separation claims of the Debtor, not community claims. The Court notes that according to the *Petition for Dissolution of Marriage* that the Debtor filed in the Family Court, the Debtor separated from Ronald on March 18, 2010. A review of the claims indicates that the indebtedness asserted by each claimant was incurred subsequent to March 18, 2010. The Court agrees with the Trustee that the claims are not community claims.

The Trustee proposes to distribute the Sale Proceeds as follows:

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- 1) First, all remaining expenses of administration will be paid.
- 2) Second, the remaining funds will be divided in half, one half allocable to the Debtor and the other half allocable to Ronald.
- 3) Third, the Debtor's separate debts will be paid from the half allocable to the Debtor.
- 4) Fourth, Ronald's half will be divided as follows:
 - a) The Debtor's spousal support lien of \$69,186 (plus any additional interest owing as of the date of payment) will be paid in full; and
 - b) The balance will be paid to Ronald.

The Trustee's proposed distribution is consistent with § 726(c). The Court has previously found that the Trustee is authorized to pay administrative expenses from the estate's community property (see Section I.A.4, above). Nothing in the record establishes cause for the Court to depart from its previous finding.

After all remaining expenses of administration have been paid, the Trustee proposes to divided the remaining funds in half, with one half allocable to the Debtor and the other half allocable to Ronald. The post-separation claims against the Debtor will then be paid from the half allocable to the Debtor.

Once the remaining funds have been divided, the Debtor's share of such funds will no longer constitute community property. Instead, such funds will be property of the estate liable for the separate property claims against the Debtor asserted by Shaco and Settle. Such funds may be distributed to these claimants pursuant to § 726(c)(2)(C). Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), *aff'd sub nom. Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10.

The Trustee proposes to pay the Debtor's Support Lien from Ronald's half of the proceeds. This result is consistent with § 726(c) and the Court's prior rulings. In connection with the Sale Motion, the Court found that Ronald's half of the proceeds remained subject to the Support Lien. It is therefore appropriate for the Support Lien to be paid from Ronald's share.

Ronald argues that the Support Lien should not be paid from his share because he

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has filed a motion before the Family Court attacking the Support Lien. Ronald's argument lacks merit. What matters for purposes of the instant Motion is that the Support Lien remains enforceable against Ronald. Of course, Ronald is free to take whatever actions he deems necessary to secure his rights before the Family Court. Nonetheless, principles of comity do not permit this Court to disregard the Support Lien simply because Ronald contends that he will shortly convince the Family Court to modify the Support Lien.

Ronald next argues that the Debtor's alleged bad-faith concealment of the Property requires the Trustee to disregard the fact that Ronald's half of the Sale Proceeds remain encumbered by the Support Lien by not paying anything to the Debtor on account of the Support Lien. In support of his position, Ronald points to § 522(g), which prevents "a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed." *Hitt v. Glass (In re Glass)*, 164 B.R. 759, 761 (9th Cir. BAP 1994).

"Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (U.S. 1979). The Support Lien is a property interest of the Debtor arising under California law. Assuming *arguendo* that the Debtor did conceal the Property in bad faith as alleged by Ronald, this still would not warrant disregarding the Support Lien. There is no provision in the Bankruptcy Code that allows the Court to abrogate property rights arising in connection with a marital dissolution proceeding simply because a debtor has assertedly concealed assets from the Trustee.

Ronald's theory that the Debtor's alleged bad faith concealment compels the Trustee to withhold payment of the Sale Proceeds from the Debtor is foreclosed by *Law v. Siegel*, 134 S.Ct. 1188 (2014). In *Law*, the Supreme Court held that the Bankruptcy Court lacked the ability to surcharge the debtor's homestead exemption to compensate the Trustee for attorneys' fees incurred overcoming the debtor's fraudulent misrepresentations. The Court held that the surcharge was unauthorized because "it contravened a specific provision of the Code." *Id.* at 1195.

Here, the Court has held that Ronald's portion of the Sale Proceeds are encumbered by the Support Lien in favor of the Debtor. Section 363(e) requires the Court to provide adequate protection to entities holding an interest in estate property. Directing the Trustee to withhold payment of the Support Lien to the Debtor, where

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the estate property held by the Trustee remains subject to that Support Lien, is in contravention of § 363(e).

III. Conclusion

Based upon the foregoing, the Trustee's Motion to Intervene is GRANTED. The Court will dismiss the Complaint's claim for declaratory relief for failure to state a claim upon which relief can be granted. The Trustee's Second Disbursement Motion is GRANTED.

IV. Evidentiary Rulings

The Trustee objects to those portions of Ronald's testimony containing legal argument, legal conclusions, and characterization of the Court's prior rulings and the case history. The Court construes such testimony only as argument, not as evidence.

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

Note 1

Except for citations set forth in Section I.A.1, "Adv. Doc. No." citations are to Adv. No. 2:19-ap-01004-ER. "Adv. Doc. No." citations contained in Section I.A.1, and any other citations pertaining to the Complaint and Purported Cross-Complaint (both defined below), are to Adv. No. 2:17-ap-01505-ER. "Bankr. Doc. No." citations are to Case No. 2:11-bk-60846-ER.

Note 2

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

Note 3

Ronald initially filed the Purported Cross-Complaint in the main bankruptcy case

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rather than the adversary proceeding. After being advised of the error by the Clerk of the Court, Ronald subsequently re-filed the Purported Cross-Complaint in the adversary proceeding.

Note 4

A more detailed description of the allegations contained in the Purported Cross-Complaint is set forth in the Court's *Order Requiring Ronald Peterson to Appear and Show Cause Why the Court Should Not Construe Ronald Peterson's Purported Cross-Complaint as a Counter-Complaint, Find that the Claims Asserted in the Counter-Complaint are Compulsory, and Dismiss the Counter-Complaint as Untimely* [Adv. Doc. No. 69] (the "Order to Show Cause").

Note 5

The Court made identical findings with respect to Ronald's objection to the Proof of Claim filed by Shaco, Inc. *See* Final Ruling Overruling Objection to Claim Number 1 [Bankr. Doc. No. 82] at 4-5.

Note 6

Based on its conclusion that the Trustee is entitled to intervention as a matter of right, the Court does not reach the Trustee's alternative argument that he is entitled to permissive intervention.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:11-60846 Anne Lan Peterson

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Adv#: 2:19-01004 Peterson v. Peterson

#4.00 HearingRE: [20] Motion to Intervene Chapter 7 Trustee's Notice Of Motion And Motion To Intervene In Adversary Proceeding Pursuant To FRBP 7024; Memorandum Of Points And Authorities And Request For Judicial Notice In Support Thereof with Proof of Service (Shechtman, Zev)

Docket 20

Tentative Ruling:

3/5/2019

See cal. No. 3, incorporated by reference herein.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Pro Se

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:11-60846 Anne Lan Peterson

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Adv#: 2:19-01004 Peterson v. Peterson

#5.00 HearingRE: [21] Motion Chapter 7 Trustee's Notice Of Motion And Motion To Dismiss First Cause Of Action In Ronald Petersons First Amended Complaint, For Failure To State A Claim Upon Which Relief May Be Granted Under FRCP 12(b)(6); Memorandum Of Points And Authorities And Request For Judicial Notice In Support Thereof with Proof of Service (Shechtman, Zev)

Docket 21

Tentative Ruling:

3/5/2019

See cal. No. 3, incorporated by reference herein.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Pro Se

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:18-21250 Thomas Ernesto Merino
Adv#: 2:18-01460 Foreman v. Merino

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#100.00 HearingRE: [11] Motion for Default Judgment

Docket 11

Tentative Ruling:

3/5/2019

For the reasons set forth below, the Motion for Default Judgment is DENIED.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion for Default Judgment Under LBR 7055-1 [Doc. No. 11]
 - a) Proof of Service [Doc. No. 15]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Thomas Ernesto Merino (the "Debtor/Defendant") filed a voluntary Chapter 7 petition on December 27, 2018. On December 27, 2018, Star Rae Foreman ("Plaintiff"), proceeding *pro se*, filed a *Complaint for Determination of Dischargeability and Objecting to Debtor's Discharge* [Doc. No. 1] (the "Complaint"). Among other things, the Complaint alleges that the Debtor/Defendant is indebted to Plaintiff in an amount in excess of \$12,000 for renting to Plaintiff a substandard and non-permitted apartment. Plaintiff seeks a judgment that the indebtedness is non-dischargeable pursuant to § 523(a)(2)(A) and (a)(6). Plaintiff further alleges that Debtor/Defendant's discharge should be denied, pursuant to § 727(a)(3), (a)(4)(A), (a)(4)(B), and (a)(4)(D).

Debtor/Defendant has not responded to the Complaint. Plaintiff moves for entry of default judgment against Debtor/Defendant.

On February 8, 2019, the Clerk of the Court (the "Clerk") denied Plaintiff's request for entry of default, because Plaintiff had not attached a Proof of Service and copy of the Summons to the request, had not attached a Proof of Service of the request on the Debtor/Defendant, and had not attached the declaration required by Local Bankruptcy Rule ("LBR") 7055-1(a). Doc. No. 12.

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On February 15, 2019, the Clerk denied Plaintiff's renewed request for entry of default, because the Summons had not been served upon the Debtor/Defendant before it expired. Doc. No. 19.

Debtor/Defendant has not filed an opposition to the Motion for Default Judgment.

II. Findings and Conclusions

Service of a Summons and Complaint is governed by Civil Rule 4, made applicable to these proceedings by Bankruptcy Rule 7004. Civil Rule 4(c) provides that a "summons must be served with a complaint."

The Clerk issued a Summons on January 7, 2019. Doc. No. 6. Plaintiff served the Complaint—but not the Summons issued by the Clerk—upon the Debtor/Defendant on January 3, 2019. Doc. No. 7. (As of January 3, 2019, the Clerk had not yet issued the Summons; thus, it was not possible for Plaintiff to have served both the Summons and the Complaint. A Summons not signed and sealed by the Clerk (such as a blank summons form) is not sufficient because it "does not confer personal jurisdiction over the defendant." *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569-70 (3d Cir. 1996).) Plaintiff subsequently served the Summons, not accompanied by a copy of the Complaint, upon the Debtor/Defendant. Doc. No. 16. The exact date of service of the Summons is not clear because the handwriting on the Proof of Service is not legible. As best the Court can determine, it appears that the Summons was served on January 14, 2019.

By not serving the Summons concurrently with the Complaint, Plaintiff failed to comply with the requirements of Civil Rule 4(c), which provides that a "summons must be served with a complaint." Debtor/Defendant was not required to respond to a Complaint that was not properly served. Accordingly, the Motion for Default Judgment is DENIED.

By no later than **March 15, 2019**, Plaintiff shall request a new Summons from the Clerk. Plaintiff shall then serve the Summons and Complaint **TOGETHER** upon the Debtor/Defendant in the manner prescribed by Bankruptcy Rule 7004. By no later than **March 22, 2019**, Plaintiff shall file a Proof of Service establishing compliance with the requirements of Bankruptcy Rule 7004.

The Status Conference, set for March 12, 2019, at 10:00 a.m., is VACATED. Upon issuance of the alias Summons, the Clerk will issue an updated *Scheduling Order* setting forth the dates that will govern litigation of this action, including the date upon which a continued Status Conference will take place.

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The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#101.00 HearingRE: [757] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice Of Motion And Motion For Order Approving Sale Of Real Property Pursuant To 11 U.S.C. §363 Free And Clear Of All Liens, Claims And Interests, And Granting Certain Other Related Relief; Memorandum Of Points And Authorities; Declarations Of Ruben Monge, Jr., Vu Ly And Quay Tran In Support Thereof, with Proof of Service

Docket 757

Tentative Ruling:

3/5/2019

Hearing required. The Court will conduct an auction in accordance with the procedures set forth below.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims, and Interests and Granting Certain other Related Relief [Doc. No. 757] (the "Sale Motion")
- 2) Notice of Sale of Estate Property [Doc. No. 758]
- 3) JPMorgan Chase Bank, N.A.'s Limited/Condition Non-Opposition to Debtor's Motion for Order Approving Sale of Property Free and Clear of Liens [Doc. No. 763] (the "Limited Opposition")
- 4) Stipulation Resolving the United States of America's Opposition to the Debtor-in-Possession's Motion for Order Approving Sale of Real Property [Doc. No. 764] (the "IRS Stipulation")
- 5) Order Approving Stipulation Resolving the United States of America's Opposition to the Debtor-in-Possession's Motion for Order Approving Sale of Real Property [Doc. No. 767] (the "Order Approving IRS Stipulation")
- 6) As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

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Monge Property Investments, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on May 31, 2012 (the "Petition Date"). The Debtor owns and operates three parcels of residential real property located at the following addresses: (1) 5908 1/2 Fayette St., Los Angeles, CA 90042 (the "Residence"); (2) 5908 Fayette St., Los Angeles, CA 90042 (the "Fayette Property"); and (3) 942-44 Marine Ave., Wilmington, CA 90744 (the "Marine Property"). The Debtor is operating its business and managing its financial affairs as a debtor-in-possession.

On August 20, 2018, the Court entered an order approving the adequacy of the Debtor's Disclosure Statement [Doc. No. 729]. The Debtor has served its solicitation package for confirmation of a plan of reorganization [See Doc. Nos. 682, 732, 733 and 734], but the confirmation hearing has been continued several times by agreement between the Debtor and certain parties as a result of the Debtor's inability to consummate a previously approved sale of the Residence after the buyer backed out.

Summary of the Sale Motion

The Debtor presently seeks an order authorizing the sale of the Fayette Property so that it can use the sale proceeds to fund necessary effective date payments proposed under its chapter 11 plan and satisfy the feasibility requirements for plan confirmation.

On August 22, 2014, the Court entered the Order Approving the Debtor's Application to Employ Vu Ly (the "Broker") as Real Estate Broker [Doc. No. 323]. The Debtor listed the Fayette Property for sale with the Broker on August 2, 2018. After a period of marketing the Fayette Property, including a series of price reductions, the Debtor entered into negotiations with Quay Tran and Linda Lam (the "Proposed Buyers") for the sale of the Fayette Property for a purchase price of \$730,000, subject to overbids. The sale is on an "as-is, where-is" basis.

The Debtor believes that the proposed sale of the Fayette Property will generate approximately \$492,998 of net proceeds for the Estate. Therefore, the Debtor seeks an order: (a) authorizing the sale of the Property to the Proposed Buyers free and clear of all liens, claims, and interests; (b) approving the proposed overbid procedures; (c) determining that the Proposed Buyers are good faith purchasers; (d) authorizing payment of commissions set forth in the Sale Motion at the close of escrow; and (e) waiving the fourteen-day stay prescribed by Rule 6004(h) of the Federal Rules of

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Bankruptcy Procedure.

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The key sale terms are as follows:

- 1) Proposed buyers: Quay Tran and Linda Lam (the "Proposed Buyers")
- 2) Property for sale: 5908 Fayette Street, Los Angeles, CA 90042
- 3) Purchase price: \$730,000
- 4) Overbids: The initial overbid shall be \$15,000; subsequent overbids shall be in the amount of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Debtor of their intent to overbid and the amount of such interested bidder's initial overbid no later than seventy-two hours prior to the hearing on the Sale Motion. Overbidders shall provide the Debtor with a cashier's check in the amount of \$10,000 prior to the hearing on the Sale Motion.

Summary of JP Morgan Chase Bank's Limited Opposition

Senior secured creditor, JP Morgan Chase Bank, N.A. ("Chase"), filed a timely limited/conditional non-opposition (the "Limited Opposition") to the Sale Motion [Doc. No. 763]. Chase states that pursuant to a stipulation and order regarding Chase's claim treatment, the Debtor agreed to pay Chase in full pursuant to the terms of the original, pre-confirmation loan amount at the time of sale, in the event the Fayette Property is sold prior to confirmation of the Debtor's plan [Doc. Nos. 694 & 702]. Chase estimates that its total claim as of filing the Limited Opposition was \$165,121.41 [Note 1]

Based upon the foregoing, Chase states that it consents to the proposed sale provided that its claim is paid in full directly from escrow and that the Debtor includes certain language in the sale order, as set forth on pages 5-6 of the Limited Opposition, that preserve Chase's rights.

As of the preparation of this tentative ruling, the Debtor has not filed a reply.

The IRS Stipulation and Order

On February 20, 2019, the United States of America acting on behalf of the Internal Revenue Service, on the one hand, and the Debtor, on the other hand, filed a stipulation resolving the IRS's opposition to the Sale Motion [Doc. No. 764] (the

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"IRS Stipulation"). On February 21, 2019, this Court entered an order approving the IRS Stipulation [Doc. No. 767]. Accordingly, any order approving the Sale Motion shall incorporate the terms of the stipulation.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits a debtor-in-possession to sell estate property outside the ordinary course of business, subject to court approval. The debtor-in-possession must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Here, the Debtor articulates a sufficient business justification for the sale. The Debtor believes the proposed sale of the Fayette Property is in the best interest of the Estate because the sale will generate significant cash proceeds for the Estate. Additionally, the Debtor believes that the sale price is reasonable considering that the Fayette Property was actively marketed for several months. Additionally, the sale is subject to overbids, which will further ensure that the Fayette Property is sold for the highest and best price.

The Court also finds that the Debtor has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a

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money satisfaction of such interest.

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11 U.S.C. § 363(f).

In this case, the Court finds that the Sale Motion satisfies the requirements of § 363(f)(3). The price at which the Property will be sold (\$730,000) is greater than the aggregate value of all liens on the Fayette Property. However, Chase's Limited Opposition is sustained. The Debtor is directed to coordinate with Chase to submit a proposed Sale Order incorporating the language set forth in the Limited Opposition.

The Court has reviewed the declaration submitted on behalf of the Proposed Buyers and finds that the buyers are good faith purchasers within the meaning of § 363(m). Accordingly, if the Proposed Buyers are the successful bidders at the auction, the Court will approve an order making a § 363(m) finding.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$15,000. Subsequent overbids will be increments of \$5,000, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Proposed Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of § 363(m). If that buyer does not personally appear or provide testimony, the Court will not make a § 363(m) finding.

III. Conclusion

For the reasons set forth above, the Sale Motion is GRANTED. The Court will conduct the auction in accordance with the procedures set forth above.

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The Debtor shall coordinate with Chase and the IRS to submit an agreeable conforming proposed order, incorporating this tentative ruling, within 7 days of the hearing.

Note 1: The Sale Motion estimated Chase's claim to be \$162,537.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:12-29275 Monge Property Investments, Inc.

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#102.00 Hearing

RE: [683] Motion for approval of chapter 11 disclosure statement (SECOND AMENDED) Describing Second Amended Chapter 11 Plan Of Reorganization And Setting Dates And Procedures For Approval Of Second Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Ruben Monge, Jr. In Support Thereof, with Proof of Service

FR. 11-7-18; 1-23-19

Docket 683

***** VACATED *** REASON: PER ORDER ENTERED 2-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#103.00 Hearing

RE: [62] Motion Notice of Motion and Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Avenue, Los Angeles) Pursuant to 11 U.S.C. §§363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to 11 U.S.C. §364 and (3) Authorizing Payment of Secured Debt; Declaration of Sandra Mcbeth in Support Thereof, with Proof of Service

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON
2-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:18-20151 Verity Health System of California, Inc.

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Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#104.00 HearingRE: [9] Motion to Seal Document. /Notice of Motion and Motion for Authority to File Complaint Under Seal, Memorandum of Points and Authorities and Declaration of Steven J. Kahn in Support Thereof (Kahn, Steven)

Docket 9

Tentative Ruling:

3/5/2019

Tentative Ruling: Denied.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Authority to File Complaint Under Seal [Doc. No. 9] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On February 5, 2019, Verity Health System of California, Inc., St. Vincent Medical Center, and St. Francis Medical Center (the "Plaintiffs") filed a redacted *Complaint for Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief* [Doc. No. 1] (the "Redacted Complaint") against Heritage Provider Network, Inc. (the "Defendant"). Plaintiffs now seek authorization to file an unredacted version of the Complaint under seal.

Plaintiffs state that Defendant has taken the position that Plaintiffs may not divulge portions of the Redacted Complaint. Plaintiffs do not agree with Defendant's position. However, Plaintiffs state that Defendant would not permit Plaintiffs to file an unredacted version of the Redacted Complaint. Plaintiffs' counsel has discussed limiting the redactions with Defendant, but the discussions have proved unsuccessful. Because Defendant does not oppose the filing of an unredacted Complaint under seal, Plaintiffs seek such relief.

No opposition to the Motion is on file.

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II. Findings and Conclusions

Section 107(b) provides in relevant part: "On request of a party in interest, the bankruptcy court shall ... protect an entity with respect to a trade secret or confidential research, development, or commercial information." Commercial information is "information which would cause 'an unfair advantage to competitors by providing them information as to the commercial operations'" of the party seeking protection. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (internal citations omitted).

Here, Plaintiffs seek to file a complaint under seal. The Redacted Complaint on file with the Court contains so many redactions that it is not possible for the Court to determine the wrongdoing alleged.

Plaintiffs have not established that a complaint which contains mere allegations of wrongdoing constitutes a trade secret or confidential research, development, or commercial information within the meaning of § 107(b). It is difficult for the Court to envision how a complaint could ever fall within the scope of § 107(b), since it merely alleges that the Defendant has engaged in conduct giving rise to liability. Mere allegations are not facts, and are therefore not "information" subject to protection under § 107(b).

Even if the allegations of a complaint did qualify as "information" subject to protection under § 107(b), the evidence in the record does not support the granting of the relief requested. Bankruptcy Courts "must 'carefully and skeptically review sealing requests to insure that there really is an extraordinary circumstance or compelling need' to seal the documents at issue. The reason is simple—court records are public records, and sealing abridges the public's right to know." *In re Faucett*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010).

Here, Plaintiffs have not identified, even in broad terms, the nature of the information which Defendant contends is protected from disclosure. Nor have Plaintiffs identified the extraordinary circumstances or the compelling supporting the request to file the Complaint under seal. The Motion states only that "Defendant contends that the matters redacted from the Complaint may not be publicly disclosed." Kahn Decl. at ¶ 3.

Further, and perhaps more importantly, permitting the filing of the complaint under seal would severely compromise Court's ability to adjudicate the matters at issue in this proceeding. The redactions are so extensive that the Court is unable to determine the wrongdoing that is alleged. Were the Court to permit Plaintiffs to file the Complaint under seal, it would not be possible for the Court to hear any number of standard litigation motions unless the hearings on such motions were also conducted

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

CONT... **Verity Health System of California, Inc.**

Chapter 11

under seal. For example, the hearing on a Civil Rule 12(b)(6) Motion would have to remain sealed, as such a hearing would inevitably result in the disclosure of the Complaint's redacted allegations. In issuing tentative rulings on matters concerning the Complaint the Court itself may conceivably be violate its own redaction order. When issuing tentatives and crafting orders the Court would need to be extra vigilant that it was not airing information covered by the redaction. In fact, it could not do so considering the broad scope of the redactions.

Litigating an entire action in secrecy is not in the public interest and will not be countenanced by the Court. "The right of public access to judicial records ... is 'fundamental to a democratic state' and is analogous to the First Amendment right to freedom of speech and of the press and to the Sixth Amendment guarantee of public trials." *In re Inslaw, Inc.*, 51 B.R. 298, 299 (Bankr. D.D.C. 1985).

Based upon the foregoing, the Motion is DENIED.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER

Pro Se

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

Plaintiff(s):

VERITY HEALTH SYSTEM OF

Represented By
Steven J Kahn

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
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Los Angeles
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Monday, March 11, 2019

Hearing Room 1568

10:00 AM

2:18-24763 Babken Chakhoyan

Chapter 7

#1.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Lexus RX350 .

Docket 13

Tentative Ruling:

3/7/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention not to assume his lease of the vehicle.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

**United States Bankruptcy Court
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Monday, March 11, 2019

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10:00 AM

CONT... Babken Chakhoyan

Chapter 7

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

Party Information

Debtor(s):

Babken Chakhoyan

Represented By
Vilen Khachatryan

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 11, 2019

Hearing Room 1568

10:00 AM

2:19-10943 HEE SOO CHANG

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Mercedes-Benz S550, VIN WDDUG8CB1GA209945 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

3/7/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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CONT... HEE SOO CHANG

Chapter 7

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

Party Information

Debtor(s):

HEE SOO CHANG

Represented By
Je M Cha

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 11, 2019

Hearing Room 1568

10:00 AM

2:17-25586 Soheil Khanian

Chapter 7

#3.00 Show Cause Hearing
RE: [24] Order Providing Notice Of The Court's Intent To (1) Dismiss This Bankruptcy Case And (2) Vacate The Debtor's Discharge, Unless An Interested Party Objects By No Later Than March 4, 2019 . In the event an interested party files a timely objection, a hearing on whether the Debtor's discharge should be vacated and the case dismissed shall take place on Monday, March 11, 2019, at 10:00 a.m. (Lomeli, Lydia R.)

Docket 25

Tentative Ruling:

3/7/2019

Order signed. Hearing is vacated.

Party Information

Debtor(s):

Soheil Khanian

Represented By
Mitchell R Sussman

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01065 Goodrich v. Have Fashion, Inc., a California corporation

- #1.00** Status Conference RE: [1] Adversary case 2:17-ap-01065 **to monitor the status of the consummation of the Settlement Agreement** Complaint by David M. Goodrich against Have Fashion, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17; 12-12-17; 6-5-18; 1-15-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-28-19**

Tentative Ruling:

1/14/2019

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments totaling \$18,000 over a period of approximately one year, with the final payment to be made on December 15, 2018.

A final payment of \$3,000 remains outstanding. The Chapter 7 Trustee (the "Trustee") expects that the final payment will be forthcoming.

Pursuant to Trustee's request, a continued Status Conference to monitor consummation of the Settlement Agreement shall take place on **March 12, 2019, at 10:00 a.m.** The Trustee shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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

**United States Bankruptcy Court
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10:00 AM

CONT... Shasa USA LLC

Chapter 7

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Have Fashion, Inc., a California

Represented By
Michael H Yi

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01117 Goodrich v. Must Have Inc., a California corporation, d/b/a Da

#2.00 Status Conference to Monitor Consummation of Settlement Agreement
RE: [1] Adversary case 2:17-ap-01117. Complaint by David M. Goodrich against
Must Have Inc., a California corporation, d/b/a Danbee. (Charge To Estate).
Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11
U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of
money/property - 547 preference)) (Werth, Steven)

fr: 9-25-17; 1-29-18; 6-5-18; 1-15-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-28-19**

Tentative Ruling:

1/14/2019

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments totaling \$12,000 over a period of approximately one year, with the final payment to be made on December 15, 2018.

A final payment of \$2,000 remains outstanding. The Chapter 7 Trustee (the "Trustee") expects that the final payment will be forthcoming.

Pursuant to Trustee's request, a continued Status Conference to monitor consummation of the Settlement Agreement shall take place on **March 12, 2019, at 10:00 a.m.** The Trustee shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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

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10:00 AM

CONT... Shasa USA LLC

Chapter 7

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Must Have Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#3.00 Status Hearing

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

fr. 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

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CONT... Lempa Roofing Inc

Chapter 7

The Home Depot, Inc. Pro Se

Home Depot Credit Services Pro Se

Home Depot U.S.A., Inc. Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Singh, Sonia)

fr. 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 5-14-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

The Chapter 7 Trustee (the "Trustee") shall appear to respond to the Court's concerns, set forth below.

The Trustee has collected and is holding receivables in the amount of \$23,117.15 in a segregated account (the "Segregated Funds"). The Segregated Funds are encumbered by security interests asserted by Defendants FinishLine Capital, Inc., ML Factors Funding, LLC, Last Chance Funding, Inc., TVT Capital, LLC, Complete Business Solutions Group, Inc., Karish Kapital LLC, and Yellowstone Capital West, LLC. The Trustee is unable to determine which Defendant is entitled to the Segregated Funds. The Trustee is willing to deliver the Segregated Funds to whichever Defendant is entitled to receive them.

Pursuant to Cal. Code Civ. Proc. § 386, the Trustee seeks the following relief:

- 1) An order directing the Clerk of the Court to hold the Segregated Funds pending determination of the rights of the Defendants;
- 2) An order requiring Defendants to litigate their respective rights and claims in and to the Segregated Funds;
- 3) An order discharging the Trustee from any and all liability on account of

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CONT...

Golden Diamond International Inc.

Chapter 7

- the claims of each of the Defendants in and to the Segregated Funds; and
- 4) An award of costs and reasonable attorneys' fees, to be determined by the Court and paid out of the Segregated Funds.

Each Defendant was required to respond to the Complaint by no later than October 17, 2018. None of the Defendants have responded to the Complaint. In his *Unilateral Status Report*, the Trustee states that he intends to file a motion to deposit the Segregated Funds to the Court's registry.

Cal. Code Civ. Proc. § 386 provides:

Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.

In *Dial 800 v. Fesbinder*, 118 Cal. App. 4th 32, 42–43, 12 Cal. Rptr. 3d 711, 718 (2004), *as modified* (May 5, 2004), the California Court of Appeal explained the purpose and structure of interpleader actions brought under Cal. Code Civ. Proc. § 386:

In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds. Upon an admission of liability and deposit of monies with the court, the plaintiff then may be discharged from liability and dismissed from the interpleader action. The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court's custody until the rights of the potential claimants of the monies can be adjudicated. Thus, the interpleader proceeding is traditionally viewed as two lawsuits in one. The first dispute is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds.

Dial 800, 118 Cal. App. 4th at 42–43 (internal citations omitted).

To satisfy his right to interplead the funds, the Trustee must "show that the

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CONT... Golden Diamond International Inc.

Chapter 7

defendants make conflicting claims" to the funds, and that the Trustee "cannot safely determine which claim is valid ..." *Placer Foreclosure, Inc. v. Aflalo*, 23 Cal. App. 5th 1109, 1113, 233 Cal. Rptr. 3d 694, 697 (Ct. App. 2018).

The Trustee shall appear at the hearing to address the following issues. First, the Court requires a further explanation regarding why the Trustee "cannot safely determine" which of the claims asserted by the Defendants is valid. *Placer Foreclosure*, 23 Cal. App. 5th at 1113. The Complaint alleges that each Defendant has recorded UCC financing statements against the Debtor's assets with the California Secretary of State. It is unclear to the Court why the Trustee cannot determine which Defendant is entitled to the funds by examining the priority of the security interests asserted by the Defendants.

Second, the Court requires further information regarding the Trustee's plans to resolve this action given the failure of any of the Defendants to respond to the Complaint. Seven entities have asserted security interests against the Segregated Funds, which amount to only \$23,117.15. In the event the Court determines that the Trustee is entitled to be paid reasonable attorneys' fees from the Segregated Funds, the amount available to the Defendants will be even less. Given the small amount at issue, it would not be surprising if one or more of the Defendants continued to decline to respond to the litigation. If the Defendants refuse to participate in the litigation, how can the Court determine which Defendant is entitled to the funds?

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
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Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se

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10:00 AM

CONT... Golden Diamond International Inc.

Chapter 7

Yellowstone Capital West

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

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Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:18-11868 Maria Guadalupe Ortiz Santos

Chapter 7

Adv#: 2:18-01403 Yoo v. Gutierrez

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01403. Complaint by Timothy J. Yoo against Eduardo Infanzon Gutierrez. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfer [11 U.S.C. §§ 542, 544, 550 and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Burstein, Richard)

Docket 1

Tentative Ruling:

3/11/2019

The Chapter 7 Trustee (the "Trustee") filed a *Complaint to Avoid and Recover Fraudulent Transfer* [Doc. No. 1] (the "Complaint") on November 28, 2018, commencing this action. The Complaint alleges that the action is a core proceeding and that the Trustee consents to final judgment by the Bankruptcy Court. Complaint at ¶ 7.

On January 2, 2019, Defendant filed an Answer to the Complaint, in which he admitted the Complaint's jurisdictional allegations. *See* Answer at ¶ 1.a. (stating that Defendant denies "each and every allegation in the Complaint," with the exception of, *inter alia*, the allegations set forth in ¶ 7 [the jurisdictional allegations], "which are admitted as true ...").

On December 6, 2018, the Court issued a Scheduling Order [Doc. No. 3-1], which the Trustee served upon the Defendant on December 10, 2018. Doc. No. 8. The Scheduling Order provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than ten days prior to the date set for the first status conference. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

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CONT... Maria Guadalupe Ortiz Santos

Chapter 7

Scheduling Order at ¶ 6.

In the Joint Status Report [Doc. No. 10] filed on February 26, 2019, Defendant checked the box indicating that he did not consent to entry of a final judgment by the Bankruptcy Court. However, Defendant did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. Therefore, Defendant is deemed to consent to the Bankruptcy Court's authority to enter a final judgment.

Defendant's failure to object to entry of final judgment by the Bankruptcy Court in his Answer similarly constitutes consent to the Bankruptcy Court's entry of final judgment. Bankruptcy Rule 7012 provides: "A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court." Defendant did not state whether he consented to entry of final judgment by the Bankruptcy Court in his Answer. Civil Rule 8(b)(6) provides that "[a]n allegation ... is admitted if a responsive pleading is required and the allegation is not denied." In his Answer, Defendant admitted without qualification all the allegations set forth in ¶ 7 of the Complaint. Paragraph 7 of the Complaint provides:

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) and General Order No. 13-05 of the United States District Court for the Central District of California. This is a core proceeding under 28 U.S.C § 157(b)(1), 2(E) and 2(H). The Trustee consents to final judgment by the Bankruptcy Court.

By admitting the allegations of ¶ 7 in their entirety and by failing to object anywhere in the Answer to entry of final judgment by the Bankruptcy Court, Defendant admitted that the Bankruptcy Court has core jurisdiction and consented to entry of final judgment by the Bankruptcy Court.

For these reasons, the objection asserted by Defendant in the Joint Status Report to the Bankruptcy Court's entry of final judgment is **OVERRULED**.

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS** as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is

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CONT...

Maria Guadalupe Ortiz Santos

Chapter 7

7/30/2019.

- c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party

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Maria Guadalupe Ortiz Santos

Chapter 7

cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

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CONT... Maria Guadalupe Ortiz Santos Chapter 7

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

Party Information

Debtor(s):

Maria Guadalupe Ortiz Santos

Represented By
Peter M Lively

Defendant(s):

Eduardo Infanzon Gutierrez

Pro Se

Plaintiff(s):

Timothy J. Yoo

Represented By
Richard Burstein

Trustee(s):

Timothy Yoo (TR)

Represented By
Richard Burstein

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10:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01425 Cortes v. LeClair

#6.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01425. Complaint by Alvaro Cortes against Jeremy Wyatt LeClair. false pretenses, false representation, actual fraud)),(11 (Recovery of money/property - 542 turnover of property)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Weissman, I)

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

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10:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

Docket 1

***** VACATED *** REASON: CONTINUED 5-14-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By

Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-23852 Du Un Kim

Chapter 7

Adv#: 2:18-01437 LA Financial Credit Union v. Kim et al

#8.00 Status HearingRE: [1] Adversary case 2:18-ap-01437. Complaint by LA Financial Credit Union against Du Un Kim. false pretenses, false representation, actual fraud)) (Anaya, Alana)

Docket 1

Tentative Ruling:

3/11/2019

Tentative Ruling:

Hearing vacated. This action has been dismissed as moot.

Party Information

Debtor(s):

Du Un Kim Pro Se

Defendant(s):

Du Un Kim Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

LA Financial Credit Union Represented By
Alana B Anaya

Trustee(s):

Brad D Krasnoff (TR) Pro Se

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10:00 AM

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

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#9.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

3/11/2019

Subsequent to the entry of Defendant's default, the Court vacated all previously ordered litigation deadlines. Doc. No. 35. On February 1, 2019, the Court approved a stipulation setting aside Defendant's default. Doc. No. 45.

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS that the following litigation deadlines shall apply:

- 1) The last day to amend pleadings and/or join other parties is **4/11/2019**.
- 2) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next

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closest date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily

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Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

overruled, and may subject the moving party to sanctions.

- c) The failure of a party to file a Motion in Limine complying with the requirements of ¶(8)(b) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(8)(b) and shall be filed by the deadline specified in ¶(8)(b). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 9) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

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**Gardens Regional Hospital and Medical Center, Inc.
Jeffrey I Golden**

Chapter 11

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10:00 AM

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

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

The Court ordered the Plaintiff to file a *Motion for Default Judgment* (the "Motion") by no later than December 14, 2018. Doc. No. 33. The Plaintiff filed the Motion as ordered by the Court. Doc. No. 35. The Motion was filed on a negative-notice basis pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o). The deadline to object to the Motion has expired and no objections have been filed. Accordingly, the Court finds it appropriate to rule upon the Motion in connection with this Status Conference.

The Complaint was served upon the Defendant at the following address:

Baxter Healthcare Corporation
c/o CT Corporation System
Agent for Service of Process
One Baxter Parkway
Deerfield, IL 60015

According to documents on file with the Illinois Secretary of State, the address for Defendant's Agent for Service of Process is:

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CONT... **Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**
CT Corporation System
208 So. LaSalle St., Ste. 814
Chicago, IL 60015

The address at which the Plaintiff served the Complaint is not the address for Defendant's Agent for Service of Process; it is the address of the company's corporate headquarters. Pursuant to Bankruptcy Rule 7004, a domestic corporation may be served by mailing a copy of the Summons and Complaint to the attention of an officer or a managing or general agent. Although the Summons and Complaint were sent to the address at which the Defendant's president conducts business, the mailing was not addressed to the attention of the president or any other corporate officer. The mailing instead was to the attention of CT Corporation System, the Defendant's Agent for Service of Process, which conducts business at a different address.

The Plaintiff is not required to re-serve the Summons and Complaint. However, to ensure that Defendant has received proper notice, the Plaintiff shall re-serve the Motion upon the following addresses:

Baxter Healthcare Corporation
Attn: Brik V. Eyre, President
1 Baxter Pkwy
Deerfield, IL 60015

Baxter Healthcare Corporation
c/o CT Corporation System
CT Corporation System
208 So. LaSalle St., Ste. 814
Chicago, IL 60015

The Motion shall be re-served by no later than **January 22, 2019**. A continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#11.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

3/11/2019

The Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. (the "Plaintiff") filed the instant *Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550* [Doc. No. 1] (the "Complaint") against UC Irvine Medical Center (the "Defendant") on June 6, 2018. On November 2, 2018, the Clerk of the Court entered Defendant's default. Doc. No. 31.

On January 18, 2019, the Court denied Plaintiff's Motion for Default Judgment, based on Plaintiff's failure to properly serve the Summons and Complaint. Doc. Nos. 41-42. On February 1, 2019, the Court approved a stipulation between Plaintiff and Defendant to set aside the default. Doc. No. 46. On March 1, 2019, Defendant answered the Complaint. Doc. No. 50.

Shortly after the Complaint was filed, the Court issued a Scheduling Order [Doc. No. 3], which provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than ten days prior to the date set for the first status conference. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance

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with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

Scheduling Order at ¶ 6.

In a Unilateral Status Report [Doc. No. 53] filed on March 1, 2019, Defendant checked the box indicating that it did not consent to entry of a final judgment by the Bankruptcy Court. Defendant did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. However, there is no indication that Plaintiff ever served the Scheduling Order upon the Defendant. Therefore, Defendant may not have been aware of the necessity of filing a written objection in order to contest the Bankruptcy Court's authority to enter final judgment.

If Defendant wishes to contest the Bankruptcy Court's authority to enter final judgment, it must file a written objection by no later than **March 26, 2019**. If Defendant does not timely object, it will be deemed to have consented to the Bankruptcy Court's entry of final judgment. If Defendant does timely object, the issue of the Court's authority to enter final judgment shall stand submitted as of the date of Defendant's objection. In the event a hearing is required, the parties will be so notified.

Having reviewed the Joint Status Report submitted by the parties, the Court **HEREBY ORDERS** that the following litigation deadlines shall apply:

- 1) The last day to amend pleadings and/or join other parties is **4/11/2019**.
- 2) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive

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

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - c) The failure of a party to file a Motion in Limine complying with the requirements of ¶(8)(b) shall be deemed a waiver of any objections to the

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admissibility of an exhibit.

- d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(8)(b) and shall be filed by the deadline specified in ¶(8)(b). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 9) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

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

Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#12.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

3/11/2019

This action has settled. Plaintiff shall file a motion to approve the settlement by no later than **April 17, 2019**. A continued Status Conference to monitor consummation of the settlement shall be held on **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel

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**CONT... Gardens Regional Hospital and Medical Center, Inc.
John A Moe**

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Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01433 Xue v. Verity Health System of California Inc et al

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01433. Complaint by Baoru Xue against Verity Health System of California Inc , St. Francis Medical Center . (12 (Recovery of money/property - 547 preference)) ,(66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: DISMISSED ON 1-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

Verity Health System of California

Pro Se

St. Francis Medical Center

Pro Se

Plaintiff(s):

Baoru Xue

Represented By

Monica A Blut

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#14.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-2-19 AT 10:00 A.M.**

Tentative Ruling:

3/11/2019

Tentative Ruling:

Status Conference CONTINUED to **April 2, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on Defendant's Motion to Dismiss.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#15.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-28-19**

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 34] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Pobeda Services, Inc.	Represented By Jeffrey S Shinbrot
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#16.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 37] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Hakop Azatian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#17.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 10-16-18; fr. 12-12-17; 3-7-18; 5-8-18; 10-16-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-13-19 AT 10:00 A.M.**

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Grish Akopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#18.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-13-19 AT 10:00 A.M.**

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, March 12, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Represented By Kelly F Ryan
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Henry A. Hakopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate).
Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other))

fr. 11-13-18

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Pobeda Services, Inc.	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 6-12-18; 9-11-18; 11-13-18

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 6-12-18; 3-7-18; 11-13-18

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Grish Akopian	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 9-11-18; 11-13-18

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Pro Se

Henry A. Hakopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:16-17889 Manuel J. Leon, Jr.

Chapter 7

Adv#: 2:18-01157 Gonzalez v. Leon Cruz

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01157. Complaint by Rosendo Gonzalez against Ramona Leon Cruz. (Charge To Estate). Complaint for Avoidance and Recovery of Fraudulent and Preferential Transfers Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Shinbrot, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-8-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel J. Leon Jr.

Represented By
Gary Leibowitz
Jacqueline D Serrao

Defendant(s):

Ramona Leon Cruz

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Jeffrey S Shinbrot

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Jeffrey S Shinbrot

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#105.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Rafatjoo, Hamid)

fr. 11-13-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Renato Ferrer

Represented By
Joshua R Engle

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

CONT... Felicidad Ferrer

Chapter 7

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

Antony Thekkek

Represented By
Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Represented By
Varand Gourjian

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:18-13712 Chong Sang Tak

Chapter 7

Adv#: 2:18-01217 Trujillo v. Tak et al

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01217. Complaint by Celia Bryann Trujillo against Chong Sang Tak , In Og Tak , Gangnam Pizza, Inc. , dba Round Table Pizza, Does 1 Through 50, Inclusive . willful and malicious injury)) (Milano, Sonny) Additional attachment(s) added on 6/28/2018 (Milano, Sonny). Additional attachment(s) added on 6/28/2018 (Milano, Sonny).

Docket 1

***** VACATED *** REASON: PER ORDERS ENTERED 2-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chong Sang Tak	Pro Se
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Defendant(s):

Chong Sang Tak	Pro Se
In Og Tak	Pro Se
Gangnam Pizza, Inc.	Pro Se
Does 1 Through 50, Inclusive	Pro Se

Plaintiff(s):

Celia Bryann Trujillo	Represented By Christine Y Ham
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Trustee(s):

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:18-22399 Dorothy Victoria Long

Chapter 7

#107.00 HearingRE: [44] Motion for extension of time to file a complaint objecting to discharge Under 11 U.S.C. 727 and or Motion to Dismiss Case Under 11 U.S.C. 707(b) (Mar, Alvin)

Docket 44

Tentative Ruling:

3/11/2019

Tentative Ruling:

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

Pleadings Filed and Reviewed

1. Motion of the United States Trustee to Extend Filing Deadline to Dismiss Case Under 11 U.S.C. § 707(b) or Deny Debtor's Discharge Under 11 U.S.C. § 727 for the United States Trustee [Doc. No. 44] (the "Extension Motion")
2. Notice of Extension Motion [Doc. No. 46]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Dorothy Victoria Long (the "Debtor") filed this chapter 7 case on October 22, 2018 (the "Petition Date"). The first date set for the Debtor's § 341(a) Meeting of Creditors was November 27, 2018. Accordingly, the deadline to object to the Debtor's discharge under § 727 or to file a motion to dismiss the case for abuse under § 707(b) was January 28, 2019. On January 10, 2019, the Office of the United States Trustee (the "UST") filed a statement pursuant to § 704(b)(1)(A) indicating that this case is presumed to be an abuse of the provisions of chapter 7 of Title 11 [Doc. No. 36].

On January 28, 2019, the UST filed a timely motion seeking to extend the time to object to entry of the Debtor's discharge pursuant to § 727 or to file a motion to

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

CONT...

Dorothy Victoria Long

Chapter 7

dismiss this case pursuant to § 707(b) for sixty days, to and including March 28, 2019. The UST states that as a result of the lapse in government appropriations, the UST and its staff were prohibited from working, even on a voluntary basis, except in limited circumstances. Accordingly, the UST was unable to complete the ongoing inquiry and investigation into this case.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Extensions of time to object to discharge are governed by Rule 4004(b) which provides, in relevant part:

(b) Extension of Time.

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4004(b)(1).

Similarly, extensions of time to file a motion to dismiss a case for abuse under § 707(b) are governed by Rule 1017(e)(1), which provides, in relevant part:

... a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss.

Fed. R. Bankr. P. 1017(e)(1).

The Court finds that the Extension Motion was timely filed before the expiration of the sixty-day deadline on January 28, 2019. Based upon the representations in the Extension Motion and the Declaration of Alvin Mar, the Court finds that the UST has established adequate cause to grant the UST a sixty-day extension, to and including

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CONT... Dorothy Victoria Long

Chapter 7

March 28, 2019, to file a complaint under § 727 or a motion under § 707(b).

For the reasons set forth above, the Extension Motion is GRANTED.

The UST is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

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

Party Information

Debtor(s):

Dorothy Victoria Long

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#108.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 5-14-19 AT 11:00 A.M.**

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Raviner Kuma Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90

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CONT... Ravinder Kumar Bhatia

Chapter 11

days, to allow him to investigate the facts of this action, and potentially substitute in as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

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CONT... Ravinder Kumar Bhatia

Chapter 11

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-19 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01173 Official Committee of Unsecured Creditors of Garde v. BETA Healthcare

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01173. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against BETA Healthcare Group. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 12-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

BETA Healthcare Group

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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11:00 AM

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

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#113.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#114.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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11:00 AM

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

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#115.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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11:00 AM

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

Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#116.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-8-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#117.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-9-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#118.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: CONTINUED 6-11-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01180 Official Committee of Unsecured Creditors of Garde v. L.A. Good Samaritan

#119.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01180. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against L.A. Good Samaritan Pathology Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

L.A. Good Samaritan Pathology

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#120.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01182 Official Committee of Unsecured Creditors of Garde v. Cardioimage

#121.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01182. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Cardioimage Dynamics, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Cardioimage Dynamics, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#122.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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11:00 AM

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

Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#123.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#124.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#125.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#126.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENC 4-16-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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11:00 AM

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

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#127.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#128.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#129.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#130.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#131.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. Nordian Healthcare

#132.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordian Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Nordian Healthcare Solutions, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#133.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#134.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

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

Chapter 11

Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#135.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, March 12, 2019

Hearing Room 1568

11:00 AM

2:18-24837 Nandini, Inc.

Chapter 11

#136.00 HearingRE: [10] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 10

Tentative Ruling:

3/11/2019

Hearing required to address the issues set forth below.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 10] (the "Motion")
2. Opposition to Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 18] (the "Opposition")
3. United States Trustee's Reply to Opposition to Motion Under 11 U.S.C. § 1112(b) (1) to Convert Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 19] (the "Reply")

I. Facts and Summary of Pleadings

Nandini, Inc. (the "Debtor") filed this voluntary chapter 11 case on December 24, 2018 (the "Petition Date"). The Office of the United States Trustee (the "UST") seeks conversion of this case to a case under chapter 7 based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed;
- ii. Debtor has failed to:
 - a. File a notice of setting/increasing insider compensation;
 - b. Appear at the § 341(a) Meeting of Creditors;
 - c. Provide sufficient evidence of the Debtor's closing of all pre-petition bank accounts, including closing bank statements; and/or bank account

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Tuesday, March 12, 2019

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11:00 AM

CONT...

Nandini, Inc.

Chapter 11

- information in the chapter 11 compliance declaration;
- d. Provide sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts;
 - e. Provide copies of the preceding two years of state and federal income tax returns and the most recent payroll and sales tax returns at the Initial Debtor Interview;
 - f. File monthly operating reports for December 2018 and January 2019; or
 - g. Pay 4th quarter 2018 UST fees (1st quarter 2019 currently accruing)

See Declaration of Maria A. Ramos (the "Ramos Decl.").

Based upon the foregoing, the UST asserts that cause exists under § 1112(b)(1) to convert, dismiss or appoint a chapter 11 trustee in this case. The UST has reviewed the Debtor's Schedules and recommends conversion because there appear to be real and personal property assets that a trustee could administer.

The Debtor filed a timely Opposition to the Motion. The Debtor concedes that as of the filing of the UST's Motion it was out of compliance with a number of reporting obligations. However, the Debtor states that many, if not all, of the issues have been resolved or will be fully resolved prior to the hearing on the Motion. Therefore, the Debtor argues that there are insufficient grounds to convert, dismiss or appoint a chapter 11 trustee in this case and requests that the Motion be denied.

The UST filed a timely Reply to the Opposition stating that the Debtor is still not in compliance with the following U.S. Trustee requirements: (i) Debtor-in-possession voided checks; (ii) closing bank statements for pre-petition bank accounts; (iii) copies of tax returns for the preceding two years; (iv) payment of U.S. Trustee fees for the period ending December 31, 2018; and (v) no monthly operating reports have been filed to date. **[Note 1]** The UST also highlights that despite failing to appear at the § 341(a) Meeting of Creditors, which the UST notes was scheduled on the docket and electronically served on Debtor's counsel, the Debtor has made no attempt to contact the UST to reschedule the meeting. Therefore, the UST submits that cause exists to convert this case.

Alternatively, the UST requests that the Court order the Debtor to remain in full and timely compliance with UST requirements and set deadlines for the Debtor to file

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Los Angeles
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Tuesday, March 12, 2019

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11:00 AM

CONT... Nandini, Inc.

Chapter 11

a disclosure statement and plan. If the Debtor becomes delinquent, the UST requests the Court approve of the UST providing the Debtor with a one-time written notice of such delinquency and, if not cured within 7 days, permitting the UST to submit a declaration and proposed order converting this case without further notice to the Debtor or an opportunity for a hearing.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(B) gross mismanagement of the estate;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

The Debtor and the UST are directed to appear to address whether there remain any outstanding deficiencies as of the time of the hearing and whether the Debtor and UST have scheduled a continued date for a § 341(a) Meeting.

If the Court determines that the Debtor is not in compliance by the time of the hearing, the Court is prepared to find that the UST has established "cause" within the meaning of § 1112(b)(4) to convert, dismiss or appoint a chapter 11 trustee in this case for the reasons set forth in the UST's Motion and Reply. The Court is further prepared to find that conversion, rather than dismissal or the appointment of a chapter 11 trustee, is in the best interest of creditors because it appears that there are valuable assets that a chapter 7 trustee could liquidate for the benefit of creditors.

Alternatively, if the Court is satisfied that the Debtor has cured the deficiencies identified by the UST as of the time of the hearing, the Court is inclined to grant the

**United States Bankruptcy Court
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Tuesday, March 12, 2019

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11:00 AM

CONT... Nandini, Inc.

Chapter 11

UST's request that the Debtor be ordered to remain in full and timely compliance with UST requirements. If the Debtor becomes delinquent in any of the UST's requirements or fails to timely file a disclosure statement and plan by no later than **June 21, 2019** or seek an extension of such deadlines for good cause, the UST may provide a one-time written notice of delinquency to the Debtor's counsel of record to cure within 7 days. If such deficiencies are not cured within 7 calendar days or if the Debtor thereafter fails to remain in compliance with UST requirements, the UST may submit, without further notice to the Debtor or opportunity for hearing, an application, declaration and proposed order, converting this case to a case under chapter 7 and entering judgment in favor of the UST for any outstanding quarterly fees.

Note 1: The Court notes that the Debtor filed its December and January Monthly Operating Reports on March 5, 2019, shortly after the UST filed its Reply. *See* Doc. Nos. 20 & 21.

Party Information

Debtor(s):

Nandini, Inc.

Represented By
Thomas B Ure

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:14-25758 Wesley Brian Ferris

Chapter 11

#1.00 Post-Confirmation Status Conference re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16; 4-11-17; 7-11-17; 12-19-17; 5-16-18; 10-16-18

Docket 109

Tentative Ruling:

10/15/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Reorganized Debtor's Fifth Post-Confirmation Status Report [Doc. No. 242], the Court CONTINUES the status conference to July 17, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#2.00 Hearing
RE: [74] Motion re first amended chapter 11 disclosure statement

fr. 12-4-18; 1-16-19

Docket 35

*** VACATED *** REASON: CONTINUED 6-19-19 AT 10:00 A.M.

Tentative Ruling:

1/15/2019

No appearances required. Following a December 4, 2018, hearing on the adequacy of the Debtor's Disclosure Statement [Doc. No. 35], the Court set this status conference to allow time for the Debtor to determine the extent and validity of Direct Capital Corporation's ("DCC") claim. On December 10, 2018, this Court entered an order approving a stipulation between the Debtor and DCC regarding its claim [Doc. No. 50].

The Court has reviewed the Response to Debtor's Proposed Disclosure Statement and Supplemental Declaration of Eric Alan Mitnick filed by Benito Barbosa [Doc. Nos. 58, 59]. In addition to the issues this Court raised in its tentative ruling [Doc. No. 44], Mr. Barbosa contends that the Disclosure Statement lacks adequate information about the following: (i) the Debtor's transfer of his ownership interest in the Verdun Property to his wife; (ii) how the Debtor's monthly income draws are determined, information concerning the Debtor's wife's income, and financial information about the Debtor's podiatry practice; (iii) financial information about Stephens Associated Services; (iv) the Debtor's alleged inheritance of \$44,000 in 2017 and how such funds were spent; and (v) the Debtor's alleged transfer of funds into an IRA account. In reply, the Debtor [Doc. No. 60] requests an opportunity to file an amended disclosure statement and states that he will attempt to address all of these issues as well as the issues raised by the Court if permitted to do so.

Based upon the foregoing, **the hearing is CONTINUED to March 13, 2019 at 10:00 a.m.** The Debtor is directed to file an amended disclosure statement by no later than February 15, 2019. The deadline to oppose the amended disclosure statement is

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10:00 AM

CONT... Dwight Gregory Stephens

Chapter 11

February 27, 2019. The deadline to file a reply to any opposition(s) is March 6, 2019.

The Debtor is directed to give notice of the continued hearing and lodge a scheduling order within 7 days of the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:18-17000 Keith Black Racing Engines, Inc.

Chapter 11

#3.00 Hearing
RE: [48] Motion RE: Objection to Claim Number 8 by Claimant Fast Machine, Inc.. Objection to Proof of Claim No. 8 File By Fast Machines, Inc.; With Proof of Service

Docket 48

***** VACATED *** REASON: PER ORDER ENTERED 2-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keith Black Racing Engines, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:18-17000 Keith Black Racing Engines, Inc.

Chapter 11

#4.00 Hearing
RE: [51] Motion RE: Objection to Claim Number 9 by Claimant Keith Black, Inc..
With Proof of Service

Docket 51

***** VACATED *** REASON: PER ORDER ENTERED 2-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keith Black Racing Engines, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:17-14647 Robert E Bush and Judy L Bush

Chapter 7

#5.00 APPLICANT: Trustee: Carolyn A Dye

Hearing re [53] and [54] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/12/2019

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

Total Fees: \$40,000

Total Expenses: \$15

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

Party Information

Debtor(s):

Robert E Bush

Represented By
Thomas G Kemerer

Joint Debtor(s):

Judy L Bush

Represented By
Thomas G Kemerer

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Robert E Bush and Judy L Bush

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:17-14647 Robert E Bush and Judy L Bush

Chapter 7

#6.00 APPLICANT: Accountant for Trustee: LEA Accountancy, LLP

Hearing re [53] and [54] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/12/2019

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

Fees: \$5,202.50

Expenses: \$238.46

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

Party Information

Debtor(s):

Robert E Bush

Represented By
Thomas G Kemerer

Joint Debtor(s):

Judy L Bush

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

CONT... Robert E Bush and Judy L Bush

Thomas G Kemerer

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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

Wednesday, March 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 HearingRE: [1591] Motion to Approve Compromise Under Rule 9019 Debtors' Notice and Motion for Approval of Compromise with Medline Industries, Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019; Declarations of Richard G. Adcock and Peter C. Chadwick In Support Thereof

Docket 1591

Tentative Ruling:

3/12/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Approval of Compromise with Medline Industries, Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 1591] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1583, 1588, 1589, and 1591 [Doc. No. 1613]
- 2) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 1697]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. The Debtors seek approval of a settlement agreement with Medline Industries, Inc. (the "Settlement Agreement").

On October 9, 2018, the Court entered a *Final Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors* [Doc. No. 436] (the "Critical Vendor Order"). The Critical Vendor Order authorizes the Debtors to pay prepetition claims of vendors supplying critical medical supplies and services, in an aggregate amount of up to \$20

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

million.

Medline Industries, Inc. (“Medline”) is a Critical Vendor of the Debtors with prepetition claims against the Debtors. Medline is the largest privately held manufacturer and distributor of medical supplies in the country.

Pursuant to the Critical Vendor Order, the Debtors entered into two separate letter agreements (the “Critical Vendor Letter Agreements”) with Medline: (1) an agreement dated September 17, 2018, under which Medline agreed to continue to supply goods and services to the Debtors on customary trade terms in exchange for a partial payment toward Medline’s trade claim; and (2) an agreement dated November 27, 2018, under which Medline agreed to provide services under the *Daughters of Charity Health System Master Purchase Agreement* dated December 1, 2015 (the “TexCap Agreement”) in exchange for partial payment of Medline’s claim arising under the TexCap Agreement. The Debtors have paid Medline \$1,126,950 under the Critical Vendor Letter Agreements.

The Critical Vendor Letter Agreements provide that the Debtors and Medline shall enter into a settlement agreement to resolve matters related to the allowance and treatment of Medline’s prepetition claims and Medline’s potential avoidance liability.

The principal terms of the Settlement Agreement are as follows:

- 1) The Debtors agree that Medline holds a valid prepetition unsecured claim in the aggregate amount of \$3,849,192.72 (the “Aggregate Prepetition Claim”), consisting of:
 - a) an unsecured claim in the amount of \$314,167.72 for amounts due under the TexCap Agreement; and
 - b) an unsecured claim in the amount of \$3,535,025 for amounts due other than under the TexCap Agreement; such claim is partially comprised of a § 503(b)(9) claim in the amount of \$1,281,126 (the “Section 503(b)(9) Claim”).
- 2) The Aggregate Prepetition Claim shall be entitled to the following treatment:
 - a) The Section 503(b)(9) Claim shall be paid in full upon the effective date of a plan of reorganization or earlier at the Debtors’ discretion.
 - b) After deducting the Section 503(b)(9) Claim and payments thereon from the Aggregate Prepetition Claim, Medline shall have an allowed general unsecured claim in the amount of \$1,331,116.72 (the “Allowed GUC”).

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10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

- 3) Medline will provide the Debtors with net 45 day payment terms and will continue to satisfy supply requests on a timely basis, subject to the terms of the Critical Vendor Letter Agreements.
- 4) The Debtors waive any and all avoidance actions and preference claims they may hold against Medline.
- 5) To the extent that the TexCap Agreement or any other agreements between Medline and the Debtors are deemed executory contracts, neither party waives any rights under § 365.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. The Debtors have established that Medline is entitled to the Section 503(b)(9) Claim, the Aggregate Prepetition Claim, and the Allowed GUC in the amounts set forth in the Settlement Agreement. *See* Adcock Decl. at ¶ 7 (stating that the Debtors conducted a review of their books and records to determine the appropriate amount of Medline's

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CONT... Verity Health System of California, Inc.

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claims).

The Debtors have further established that any avoidance actions brought against Medline would not likely result in a meaningful recovery. *See* Chadwick Decl. at ¶ 4 (stating that the Debtors' analysis of prepetition transactions with Medline showed that most, if not all, of the payments made to Medline during the ninety day prepetition avoidance period would be subject to various defenses under § 547).

The Court finds that access to Medline's continued supply and services are critical to the Debtors' operations. The *de minimis* recovery the Debtors might be able to obtain against Medline by prosecuting avoidance actions would be more than offset by the damage to the estate resulting from the impairment of the Debtors' business relationship with Medline.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement resolves claims related to a large number of prepetition transactions. Litigation of these issues would be factually intensive and expensive, and would provide only minimal upside to the estate. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Committee does not object to the Settlement Agreement, and no creditors have objected to the Settlement Agreement.

Difficulties to be Encountered in the Matter of Collection

This factor does not apply.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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CONT... Verity Health System of California, Inc. Chapter 11

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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Hearing Room 1568

11:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#100.00 HearingRE: [35] Motion for Setting Property Value Re: 2016 Honda Accord

Docket 35

Tentative Ruling:

3/12/2019

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

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 35] (the "Valuation Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors") filed this voluntary chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors seek an order determining the value of a 2016 Honda Accord [VIN 1HGCR2F38GA067256] (the "Vehicle") pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure. As set forth in Proof of Claim No. 2, the Vehicle is encumbered by a lien in favor of American Honda Finance ("Honda") in the amount of \$19,708.60.

The Debtors seek a determination that the value of the Vehicle is \$15,977 and request that the Court bifurcate Honda's claim into a secured claim in the amount of \$15,977 and an unsecured claim of \$3,731.60 for purposes of Honda's plan treatment under § 1129. In support of the \$15,977 valuation, the Debtors attached a Kelly Blue Book print out dated February 14, 2019, reflecting a "Fair Purchase Price" of \$15,977. [Note 1]

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

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CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Pursuant to § 506(a), the Court, after notice and a hearing on the matter, may value a claim secured by a lien on property and bifurcate the "total claim into secured and unsecured portions." *Matter of Sandy Ridge Development Corp.*, 881 F.2d 1346, 1349 (5th Cir. 1989); 11 U.S.C. § 506(a); Fed. R. Bankr. P. 3012. The Debtor, as movant, bears the burden of proof to demonstrate that the lien may be modified. *In re Bethoney*, 384 B.R. 24, 31 (Bankr. D. Mass. 2008); *see also In re Trosky*, 371 B.R. 701, 707 (Bankr. M.D. Pa. 2006); *In re Fletcher*, 2007 WL 1804931, at * 2 (Bankr. S.D. Fla. 2007). The value of property pursuant to § 506(a) "shall be determined in light of the purpose of the valuation." When property is being valued for purposes of lien stripping under a reorganization plan, the Court determines the property's value as of the date of the plan confirmation hearing. *In re Abdelgadir*, 455 B.R. 896, 902 (B.A.P. 9th Cir. 2011).

The Court recognizes that the date of the valuation can never line up exactly with the date of confirmation. The exigencies of motion practice thus inevitably entail some lapse of time between the date of the valuation and the date of confirmation.

The Court also recognizes that the Debtors have not yet filed a Plan and Disclosure Statement, so the confirmation date is presently unknown. However, pursuant to Local Bankruptcy Rule 9013-1(h), the Court deems Honda's failure to oppose the Valuation Motion as its consent to the Court granting the Debtors' requested relief. **[Note 2]** Therefore, the Court is persuaded to adopt the Debtors' valuation of \$15,977 and bifurcate Honda's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60.

III. Conclusion

For the reasons set forth above, the Valuation Motion is GRANTED.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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CONT... **Samuel Antonio Acevedo and Lucy Acevedo** Chapter 11

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

Note 1: The Debtors also attached a declaration that states their opinion of value of the Vehicle at \$7,797 as of February 5, 2019, but this appears to be an error as that value is unsupported by the attached Kelly Bluebook printout that the declaration references.

Note 2: The Court also notes that vehicles typically depreciate with age, so the Debtors' proposed valuation is likely more favorable to Honda than a valuation closer to the Debtors' actual confirmation hearing date.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron

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11:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#101.00 HearingRE: [37] Motion for Setting Property Value Re: 6220 Palladio Lane, Fontana, CA 92336 (Giron, Lionel)

Docket 37

Tentative Ruling:

3/12/2019

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

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 37] (the "Valuation Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors") filed this voluntary chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors seek an order determining the value of real property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Property") pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure. As set forth in Proof of Claim No. 6, the Property is encumbered by a lien in favor of Wells Fargo Bank, N.A., as servicer for Default Document Processing ("Wells Fargo") in the amount of \$382,478.36.

The Debtors seek a determination that the value of the Property is \$435,000 as of April 2, 2018 and request that the Court make a finding that Wells Fargo holds a secured claim in the amount of \$382,478.36, which is oversecured for purposes of Wells Fargo's plan treatment under § 1129. In support of the \$435,000 valuation, the Debtors attached a certified appraisal. [Note 1]

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

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CONT... Samuel Antonio Acevedo and Lucy Acevedo

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Pursuant to § 506(a), the Court, after notice and a hearing on the matter, may value a claim secured by a lien on property and bifurcate the "total claim into secured and unsecured portions." *Matter of Sandy Ridge Development Corp.*, 881 F.2d 1346, 1349 (5th Cir. 1989); 11 U.S.C. § 506(a); Fed. R. Bankr. P. 3012. The Debtor, as movant, bears the burden of proof to demonstrate that the lien may be modified. *In re Bethoney*, 384 B.R. 24, 31 (Bankr. D. Mass. 2008); *see also In re Trosky*, 371 B.R. 701, 707 (Bankr. M.D. Pa. 2006); *In re Fletcher*, 2007 WL 1804931, at * 2 (Bankr. S.D. Fla. 2007). The value of property pursuant to § 506(a) "shall be determined in light of the purpose of the valuation." When property is being valued for purposes of lien stripping under a reorganization plan, the Court determines the property's value as of the date of the plan confirmation hearing. *In re Abdelgadir*, 455 B.R. 896, 902 (B.A.P. 9th Cir. 2011).

The Court recognizes that the date of the valuation can never line up exactly with the date of confirmation. The exigencies of motion practice thus inevitably entail some lapse of time between the date of the valuation and the date of confirmation.

The Court also recognizes that the Debtors have not yet filed a Plan and Disclosure Statement, so the confirmation date is presently unknown. However, pursuant to Local Bankruptcy Rule 9013-1(h), the Court deems Wells Fargo's failure to oppose the Valuation Motion as its consent to the Court granting the Debtors' requested relief. **[Note 2]** Therefore, the Court is persuaded to adopt the Debtors' valuation of \$435,000 and finds that Wells Fargo holds an oversecured claim of \$382,478.36 for purposes of its plan treatment.

III. Conclusion

For the reasons set forth above, the Valuation Motion is GRANTED.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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CONT... **Samuel Antonio Acevedo and Lucy Acevedo** Chapter 11

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

Note 1: The Court notes that the Debtors have used the Petition Date as the valuation for this motion but used a February 14, 2019 date for purpose of determining the value in connection with a concurrently pending request to value their vehicle. *See* Doc. No. 35 and Tentative Ruling for March 13, 2019, Cal. No. 100. The Debtors provide no explanation for using different dates. Nevertheless, because Wells Fargo has not filed an objection and the Court determines that Wells Fargo is oversecured by a significant equity cushion, it does not appear that Wells Fargo will be prejudiced by the Debtors' use of the Petition Date.

Note 2: *See* Note 1.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron

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Hearing Room 1568

11:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#102.00 Hearing
RE: [18] Motion to Amend (related document(s)1 Complaint) Trustee's Notice of Motion and Motion for Leave to Amend Complaint Pursuant to FRBP 7015, and Vacate Scheduling Order; Memorandum of Points and Authorities, Declaration of Brad D. Krasnoff and Request for Judicial Notice in Support Thereof, With Proof of Service

Docket 18

Tentative Ruling:

3/12/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion for Leave to Amend Complaint Pursuant to FRBP 7015, and Vacate Scheduling Order [Doc. No. 18] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On September 28, 2018, the Chapter 7 Trustee (the "Trustee") filed the *Trustee's Complaint for Interpleader* [Doc. No. 1] (the "Complaint"). As set forth in the Complaint, the Trustee has collected and is holding receivables in the amount of \$23,117.15 in a segregated account (the "Segregated Funds"). The Segregated Funds are encumbered by security interests asserted by seven named Defendants.

Pursuant to Cal. Code Civ. Proc. § 386, the Trustee seeks the following relief:

- 1) An order directing the Clerk of the Court to hold the Segregated Funds pending determination of the rights of the Defendants;
- 2) An order requiring Defendants to litigate their respective rights and claims in and to the Segregated Funds;
- 3) An order discharging the Trustee from any and all liability on account of the claims of each of the Defendants in and to the Segregated Funds; and

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CONT...

Golden Diamond International Inc.

Chapter 7

- 4) An award of costs and reasonable attorneys' fees, to be determined by the Court and paid out of the Segregated Funds.

None of the Defendants have responded to the Complaint. At a Status Conference conducted on January 15, 2019, the Court ordered the Trustee to serve a notice upon the Defendants stating that the Segregated Funds, less fees incurred by the Trustee in filing and prosecuting the action, would be paid to the Defendant which the Trustee had determined to be in first position. Defendants would then have ten days to object and request a hearing; absent an objection, the Court would enter an order approving the proposed payments.

Upon further investigation, the Trustee learned of four additional defendants who were not named in the Complaint and who likely have senior entitlement to the Segregated Funds. The Trustee seeks leave to amend the Complaint to name these additional defendants.

The initial deadline for the Trustee to serve notice upon the Defendants of the intended disposition of the Segregated Funds was March 12, 2019. Upon the Trustee's ex-parte application, the Court extended the deadline to April 12, 2019, in view of the pending motion for leave to amend. *See* Order Approving Trustee's Ex-Parte Application Re: Scheduling Order [Doc. No. 22]. **[Note 1]**

No opposition to the Motion is on file.

II. Findings and Conclusions

Civil Rule 15(a)(2), made applicable to these proceedings by Bankruptcy Rule 7015, provides in relevant part: "[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Leave to amend need not be granted "where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Leave to amend is appropriate under the circumstances. Granting leave to amend will allow the Trustee to name additional defendants who may be in a senior position with respect to the Segregated Funds. The original Defendants will not be prejudiced, since none of them have responded to the Complaint. There is no indication that the Trustee seeks leave to amend in bad faith, or that amendment would constitute an exercise in futility. Finally, the Trustee has requested leave to amend relatively early in the litigation; as a result, granting the request will not create undue delay.

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CONT... Golden Diamond International Inc.

Chapter 7

Based upon the foregoing, the Motion is GRANTED in its entirety. As previously ordered, the Trustee shall serve notice of the intended disposition of the Segregated Funds upon the Defendants by no later than April 12, 2019.

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

Note 1

The Motion, which was filed prior to entry of the order extending the March 12 deadline, seeks an order vacating that deadline. The Motion's request for such relief has been rendered moot by the Court's order granting the Trustee's ex-parte application for an extension of the March 12 deadline.

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
-----------------------------------	-------------------------------

Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se
Yellowstone Capital West	Pro Se

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CONT... Golden Diamond International Inc.

Chapter 7

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

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Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#103.00 Hearing
RE: [13] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion To Dismiss Complaint For (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims; Declaration of Paul Sangha (with Exhibit A) (with proof of service)

Docket 13

*** VACATED *** REASON: CONTINUED 4-2-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Represented By
David L. Neale

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Wednesday, March 13, 2019

Hearing Room 1568

11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#104.00 Hearing re [27] *Creditor Ball C M, Incs Notice Of Objection To Claim Of Homestead Exemption And Objection To Homestead Exemption Claim*

Docket 0

*** VACATED *** REASON: CONTINUED 5-8-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#105.00 Hearing re [28] *Creditor Ball C M, Inc's Notice Of Objection To Claim Of Retirement Exemption And Objection To Retirement Exemption Claim;*

Docket 0

***** VACATED *** REASON: CONTINUED 5-8-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#1.00 HearingRE: [37] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1257 North Oxford Ave., Pasadena, CA 91104-3139 . (Scheer, Joshua)

Docket 37

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$645,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$658,917. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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CONT... Hakop Jack Aivazian

Chapter 7

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

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

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

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:18-24187 Francisca Revilla Ferri

Chapter 7

#2.00 HearingRE: [22] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2528 Johnston Street, Los Angeles, CA 90031 . (Marth, Angie)

Docket 22

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$563,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$615,184. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

CONT... Francisca Revilla Ferri

Chapter 7

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

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

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

Party Information

Debtor(s):

Francisca Revilla Ferri

Represented By
Elena Steers

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-10943 HEE SOO CHANG

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Lexus RX350 .

Docket 12

Tentative Ruling:

3/14/2019

entative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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CONT... HEE SOO CHANG

Chapter 7

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

Party Information

Debtor(s):

HEE SOO CHANG

Represented By
Je M Cha

Trustee(s):

Sam S Leslie (TR)

Pro Se

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-11364 Ninfa Guadalupe Valenzuela

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2003 East Vernon Ave., Vernon,CA 90058 with Exhibits "A" through "C" and Proof of Service of Document.

Docket 9

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

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

The Movant filed an unlawful detainer action on January 24, 2019.

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

This order shall be binding and effective despite any conversion of this

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CONT... Ninfa Guadalupe Valenzuela

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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

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

Party Information

Debtor(s):

Ninfa Guadalupe Valenzuela

Represented By

Michael H Colmenares

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 HearingRE: [1610] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: David Pullman v St. Vincent Medical Center BC597684 .

Docket 1610

Tentative Ruling:

3/14/2019

For the reasons set forth below, the Stipulation between Movant and the Debtors providing for stay-relief is APPROVED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 1610] (the "Motion")
 - a) Proof of Service [of Motion] [Doc. No. 1784]
- 2) Stipulation Between Debtor, St. Vincent Medical Center, and David Pullman, Granting David Pullman Relief from the Automatic Stay [Doc. No. 1787]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by David Pullman and Stipulation Between Debtor, St. Vincent Medical Center, and David Pullman, Granting David Pullman Relief from the Automatic Stay [Doc. No. 1794]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

David Pullman ("Movant") seeks stay-relief, pursuant to § 362(d)(1), for the purpose of litigating a medical malpractice action against Debtor St. Vincent Medical Center ("St. Vincent") in the Los Angeles Superior Court. On March 12, 2019, St. Vincent and Movant stipulated to stay-relief (the "Stipulation"). The Stipulation provides that Movant will seek recovery only from applicable insurance and will

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CONT... Verity Health System of California, Inc.

Chapter 11

waive any deficiency or other claim against St. Vincent or property of St. Vincent's estate. The Official Committee of Unsecured Creditors does not oppose the Motion or the Stipulation.

II. Findings and Conclusions

Because Movant has agreed to limit recovery to applicable insurance and to waive any deficiency claim, the Court finds the Stipulation to be appropriate. Movant is granted stay-relief under § 362(d)(1) pursuant to the terms of the Stipulation.

The Debtors shall submit an order consistent with the Stipulation within seven days of the hearing.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 HearingRE: [1530] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Myung Soo Han v. Verity Health System of California et al., BC647082 .

Docket 1530

Tentative Ruling:

3/14/2019

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **May 15, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 1530] (the "Motion")
- 2) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Myung Soo Han [Doc. No. 1694]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Myung Soo Han [Doc. No. 1696]
- 4) No Reply in support of the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Myung Soo Han ("Movant") seeks stay-relief, pursuant to § 362(d)(1), for the purpose of litigating an action for assault and battery and elder abuse against the Debtors in the Los Angeles Superior Court (the "State Court Action"). The State Court Action alleges that while a patient at St. Vincent Medical Center, Movant was assaulted by an orderly when he requested that the temperature in his room be increased. The Motion does not indicate that Movant is willing to limit the recovery sought in the State Court Action to applicable insurance or that Movant will waive

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CONT... Verity Health System of California, Inc.

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any deficiency claim against the Debtors. The State Court Action was filed on January 18, 2017.

In opposition to the Motion, Debtors state that they would consider stipulating to stay-relief provided Movant agreed to seek recovery only from insurance and waived any deficiency claim. Because Movant has not agreed to limit his recovery in this manner, Debtors contend that the Motion should be denied without prejudice. Debtors assert that being required to litigate the State Court Action would distract attention from pressing issues, such as the sale of the remaining hospitals.

For the same reasons, the Official Committee of Unsecured Creditors asserts that Motion should be denied without prejudice.

Movant has not filed any reply papers in support of the Motion.

II. Findings and Conclusions

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions

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- only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
 - 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
 - 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
 - 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
 - 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
 - 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court held that "[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Id.*

Because Movant has not agreed to limit his recovery to insurance, granting stay-relief at this time would require the Debtors to defend against the State Court Action. Although it would certainly be possible for the Debtors to mount a defense at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors' professionals from other pressing matters. Among other things, the State Court Complaint alleges that after Movant told an orderly that he was cold, the orderly threatened to kill Movant and then choked Movant, causing him to fall out of his hospital bed and injuring his mouth, side, and leg. If these allegations are proven, the damages would likely be substantial. While it is true that primary responsibility for the Debtors' defense could be assigned to special litigation counsel, the Debtors' general bankruptcy counsel would still be required to monitor the litigation.

An auction of four of the Debtors' hospitals is set to occur on April 8–9, with a hearing to approve the results of the auction set for April 17, 2019. To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the auction and the subsequent hearing to approve the results of the auction. Granting stay-relief at this juncture would require the Debtors to divert their attention from issues pertaining to the sale, which would be detrimental to creditors.

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CONT... Verity Health System of California, Inc.

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In view of the findings set forth above, *Curtis* factors two, five, seven, and eleven weigh against granting stay-relief at this time. However, after the April 17 auction has concluded, application of the *Curtis* factors will yield a different result. Although the relevant *Curtis* factors do not warrant stay-relief now, stay-relief will be warranted as of **May 15, 2019**.

Granting stay-relief now would interfere with the bankruptcy case by distracting the Debtors' professionals from other pressing matters (the second *Curtis* factor). With respect to factor five, the damages sought in the State Court Action are substantial; Movant has not agreed to limit his recovery to applicable insurance; and it is therefore not known whether available insurance proceeds will be sufficient to cover any judgment Movant may obtain. Factor five therefore weighs against granting immediate stay-relief. The litigation's interference with the case has the potential to reduce creditor recoveries; therefore, factor seven weighs against granting immediate stay-relief. The State Court Action has not reached the trial stage, so factor eleven also weighs against granting immediate stay-relief.

Factor twelve—the balance of the hurt—is neutral. As discussed, granting immediate stay-relief will harm the Debtors by distracting the Debtors' professionals from other pressing matters. On the other hand, Movant is prejudiced by the inability to pursue legal redress.

To the extent that they apply, the remaining *Curtis* factors weigh in favor of immediate stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is the tribunal best suited to hear the Movant's claims (factor three); and lifting the stay would result in a more expeditious determination of the State Court Action (factor ten). Nonetheless, these factors are outweighed by the harm that immediate stay-relief would impose upon the Debtors.

Having considered the applicable *Curtis* factors, the Court finds that Movant is entitled to stay-relief, effective as of **May 15, 2019**. This result gives the Debtors some breathing space to achieve their objectives, while at the same time delaying Movant's ability to proceed with the State Court Action by only two months.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **May 15, 2019**. Movants shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

[Note 1]

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CONT... Verity Health System of California, Inc.

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

Note 1

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.10 Hearing
RE: [1551] Motion Notice of Motion and Motion to Approve Stipulation with
Aetna Life Insurance Company

Docket 1551

***** VACATED *** REASON: MATTER WILL BE HEARD BY JUDGE
BASON ON 3-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:19-10237 Bona Fide Ventures LLC

Chapter 11

#7.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 27760 Palos Verdes Dr E, Rancho Palos Verdes, California 90275 . (Bach, Julian)

Docket 17

Tentative Ruling:

3/14/2019

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 17] (the "R/S Motion")
2. Debtor's Opposition to Cohen Et Al's Motion for Relief (27760 Palos Verdes Drive East, Rancho Palos Verdes, CA 90275) [Doc. No. 22] (the "Opposition")
3. Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay [Doc. No. 28] (the "Reply")
4. Evidentiary Objection to the Declaration of Gustavo Gutierrez Filed by Debtor Bona Fide Ventures LLS in Support of Its Opposition to Relief from Stay Motion [Doc. No. 29] (the "Evidentiary Objection")
5. Notice of Errata to Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay [Doc. No. 31]

I. Facts and Summary of Pleadings

Debtor-in-possession, Bona Fide Ventures LLC (the "Debtor"), filed this voluntary chapter 11 case on January 9, 2019 (the "Petition Date"). The Debtor owns five real properties:

1. 1701 Irvine Blvd., Newport Beach, CA 92660 (the "Irvine Property")
2. Vacant land [APN 0459-432-22] ("Lot 1")
3. Vacant land [APN 0459-432-14] ("Lot 2," and together with Lot 1, the "Vacant Lots")

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4. Vacant land at El Privilegio Road, Adelanto, CA 92808 [APN 3210-571-04] (the "El Privilegio Lot")
5. 22760 Palos Verdes Drive East, Rancho Palos Verdes, CA 90275 (the "Palos Verdes Property")

Summary of R/S Motion

Neal Cohen, Sally Cohen, Vera Cohen, Charles B. Serlin, Trustee of the Charles B. Serlin Living Trust 1/1/2015, Janice L. Piraino & John K. Piraino, Trustees of the Piraino Family Trust, American Overseas Trading Corporation, Luis Schwartz, Trustee of the Schwartz 1998 Family Trust, Lori Steinberg and/or Daniel Steinberg, Trustees or their successors in trust under the LKS Trust dated April 14, 2000, The Wise Trust, Phyllis F. Stark, Dall LLC, and Earl B. Abramson, Trustee of the Earl B. Abramson 1998 Trust (collectively, "Movants") seek relief from stay pursuant to §§ 362(d)(1), (2) and (4) with respect to the Palos Verdes Property. Movants state that they hold a first priority lien in the amount of \$1,508,397.68 against the Palos Verdes Property and that the Debtor has failed to make 11 monthly payments. Movants attached the declaration of a licensed real estate broker, Brian Getz (the "Getz Decl."), estimating that the Palos Verdes Property has a fair market value of \$1,500,000. Movants also state that the Palos Verdes Property is secured by a tax lien in favor of the County of Los Angeles in the amount of \$26,922.21. Therefore, Movants contend that their interest is not adequately protected by a sufficient equity cushion.

Movant also contends that cause exists under § 362(d)(4) on the basis that the petition was part of a scheme to delay, hinder or defraud creditors that involved multiple bankruptcy filings. Movant states that pre-petition, on December 17, 2018, the Debtor's principal, Gustavo Gutierrez, filed a voluntary chapter 13 case and claimed an interest in the Palos Verdes Property. That case was dismissed on January 4, 2019. Five days later, the Debtor filed this case asserting an interest in the Palos Verdes Property.

Summary of Debtor's Opposition

On March 4, 2019, the Debtor filed a timely Opposition. Debtor contends that Movants have failed to carry their evidentiary burden because there is no evidence that the Palos Verdes Property is decreasing in value and the Debtor submits that the Palos

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Verdes Property is actually worth \$1,900,000 which leaves a 20.6% equity cushion protecting Movants' interests. In support of this valuation, the Debtor attached the Declaration of Mr. Gutierrez (the "Gutierrez Decl."). The Debtor states that it could not obtain its own appraisal in time to respond to the R/S Motion but submits that Mr. Gutierrez has knowledge of the property values in the area. The Debtor also states that it intends to file a 100% plan funded by sales of its assets and that the Palos Verdes Property is necessary for an effective reorganization. The Debtor states that it intends to file a declaration to employ a broker shortly.

In response to Movants' contention that cause exists under § 364(d)(4), the Debtor concedes that Mr. Gutierrez filed a bankruptcy case just prior to this case, but states that his case was filed for the legitimate purpose of addressing his own financial hardships. However, Mr. Gutierrez dismissed his case to focus his efforts on this case. Therefore, the Debtor contends that there has been no scheme to delay, hinder or defraud creditors as a result of this second bankruptcy filing.

Summary Movants' Reply

Movants filed a timely Reply to the Opposition. First, Movants highlights that the Debtor is a suspended corporation and is not authorized to conduct business. Movants argue that by the Debtor's own admissions it has no ongoing business operations that generate income, no cash on hand, no receivables, no unsecured creditors and no historical income. Next, Movants state that the Debtor is in substantial default under its loan obligations and has failed to pay property taxes as they have come due. Movants assert that their nonjudicial foreclosure sale was halted by Mr. Gutierrez's individual bankruptcy filing and that this case was filed only five days later to continue to hinder and delay Movants' foreclosure efforts.

In response to the Debtor's contention that the Palos Verdes Property is worth \$1,900,000, Movants state that the Debtor has had the property listed for over a year and is currently listing the property for \$1,500,000 because the Debtor has been unable to obtain an interested buyer at a higher price. Movants also argues that despite having the property currently listed and having been in bankruptcy for over two months, the Debtor still has not sought court approval of its employment of the broker. Additionally, Movants contend that the Debtor has failed to provide any admissible evidence to refute their valuation.

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Movants contend that they have carried their burden of proof by establishing that the Debtor has no equity in the Palos Verdes Property and that the Debtor has failed to carry its burden on all other issues. Movants argue that the Debtor cannot show that the Palos Verdes Property is necessary for an effective reorganization because it is a suspended corporation that cannot conduct business or participate in this matter. Movants also argue that the Debtor has not established that it has anything to reorganize or the financial wherewithal to do so.

In support of their request for relief under § 362(d)(4), Movants reiterate that this is the second bankruptcy case filed affecting the Palos Verdes Property. Movants highlight that Mr. Gutierrez's case was filed on the eve of the scheduled foreclosure sale and filed in bad faith because Mr. Gutierrez was not eligible to be a chapter 13 debtor since Movants' secured debt alone far exceeded applicable debt limitations. Movants state that this case was also filed on the eve of the continued foreclosure sale and while the Debtor was and remains a suspended limited liability company. Movants argue that the absence of any reasonable prospect of reorganization, coupled with the Debtor's failure to present admissible evidence of value and the timing of the filing on the eve of a foreclosure sale demonstrates that this case was filed in bad faith to prevent them from concluding their foreclosure sale.

II. Findings of Fact and Conclusions of Law

A. Evidentiary Objection [Note 1]

Movants ask this Court to strike paragraph 5 of the Gutierrez Declaration in its entirety. The Court overrules the evidentiary objection in-part with respect to the following testimony: "I base my valuation on the subject property at \$1,900,000 on the following: . . . C. My knowledge of the property values for the last several years in the neighborhoods in which the property is located." As the sole principal of the debtor-owner of the Palos Verdes Property, Mr. Gutierrez is competent to offer lay opinion as to its value. *See In re Cocreham*, 2013 Bankr. LEXIS 3527, at *6-7 (Bankr. E.D. Cal. Aug. 23, 2013).

However, the Court sustains the evidentiary objection in-part with respect to subparagraphs 5A and 5B on the basis that Mr. Gutierrez's testimony attempts to bring

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otherwise inadmissible hearsay evidence into the record. *See e.g., Cocreham*, 2013 Bankr. LEXIS at *6-7 (citing Barry Russell, Bankruptcy Evidence Manual, Vol. II, § 701.2, p. 784-85 (2012-13)) ("the average debtor-homeowner . . . should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties, unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc").

B. Cause Exists to Grant Relief From Stay Under § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Movants submitted evidence to support a finding that the Palos Verdes Property's fair market value is \$1,500,000 and is encumbered by a perfected deed of trust in Movants' favor. The liens against the Palos Verdes Property and the expected costs of sale total \$1,655,319.89. Therefore, the Court finds that there is no equity in the Palos Verdes Property and that Movants are not protected by an adequate equity cushion. The Court also finds that Movants' interests are not adequately protected because the Debtor failed to pay real estate taxes as they have come due. The Court finds that Movants have carried their burden of proof with respect to the Debtor's lack of equity and shifted the burden to the Debtor to demonstrate why stay relief is unwarranted.

The Debtor submitted the Gutierrez Declaration in which Mr. Gutierrez opines that the Palos Verdes Property has a value of \$1,900,000. **[Note 2]** However, because Mr. Gutierrez is not an expert, the Court accords only minimal weight to his testimony and finds it less probative than Movant's regarding the current fair market value of the Palos Verdes Property.

Therefore, the Court finds that Movants are entitled to relief from stay with respect to the Palos Verdes Property pursuant to § 362(d)(1).

C. Cause Exists to Grant Relief From Stay Under § 362(d)(2)

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Under 11 U.S.C. § 362(d)(2), the Court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

As discussed above, the Court finds Movants have carried their burden of proving that the Debtor does not have any equity in the Palos Verdes Property. Therefore, the first prong is satisfied.

To show that there is a necessity for effective reorganization, a debtor must show that there can be an effective reorganization in the sense that there is "a reasonable possibility of a successful reorganization within a reasonable time." *United Sav. Ass'n of Texas v. Timber of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 367, 108 S. Ct. 626, 89 L. Ed. 2d 740 (1988).

The Debtor has not carried its burden of demonstrating that there is a reasonable possibility of a successful reorganization within a reasonable time. First, the Debtor states that it is marching quickly towards a complete financial reorganization and that it intends to propose a 100% plan of reorganization funded by sale of certain of its properties. However, as of the preparation of this tentative ruling, the Debtor has not filed an application to employ any brokers. Nor does the Debtor offer any testimony about the form its plan would take or when it could be proposed and brought to fruition. **[Note 3]** Second, and more importantly, based upon Movants' evidence of value, it does not appear that the Debtor could sell the Palos Verdes Property under § 363(f) without Movants' consent because the Palos Verdes Property would not likely generate a sale price that exceeds existing liens.

Therefore, the Court finds that Movants have carried their burden of demonstrating that the Debtor does not have any equity in the Palos Verdes Property and the Debtor has failed to demonstrate that the Palos Verdes Property is necessary for an effective reorganization. Accordingly, Movants are entitled to relief from stay under § 362(d)(2).

D. Cause Exists to Grant Relief From Stay Under § 362(d)(4)

Section 362(d)(4) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay with respect to an act against

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the property if the court finds that the filing of the petition was part of a scheme to delay, hinder or defraud creditors that involved either (1) the transfer of all or part ownership of or interest in the property without the consent of the secured creditor or court approval or (2) multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4).

"[T]he Code requires more than just the occurrence of [] multiple filings. It requires that 'the filing of the petition was part of a scheme to delay, hinder or defraud creditors.'" *In re Khurana*, 2015 Bankr. LEXIS 2399, at *23-24 (Bankr. D. Idaho July 21, 2015). Factors considered in determining whether the filing of the petition was part of a scheme to delay, hinder or defraud include:

The number of bankruptcy filings; their frequency; the time lapsed between filings; whether the filings were dismissed, and for what reasons; whether the evidence suggests that the debtor had a legitimate belief that it could reorganize in such cases; the strategic timing of the cases, especially in relation to creditor collection efforts such as foreclosure; any changes in circumstances between the various case; and others.

Id. at *25-26.

This is the second bankruptcy filing affecting the Palos Verdes Property within approximately a month. *See In re Gustavo Gutierrez*, 2:18-bk-24614-SK, Chapter 13 case filed on December 17, 2018, dismissed January 4, 2019 (the "Gutierrez Case"). Movants state that the Gutierrez Case was filed on the eve of a scheduled foreclosure sale of the Palos Verdes Property and that Mr. Gutierrez filed a skeletal bankruptcy petition on December 17, 2018 to delay the foreclosure sale from proceeding. The Court takes judicial notice of the fact that the Gutierrez Case was dismissed on January 4, 2019 for failure to file schedules, statements, and a plan.

The Debtor argues that Mr. Gutierrez sought bankruptcy protection in good faith to address a "long list of debts" resulting from a car accident which left him unable to address his financial affairs" and that "he allowed that case to be dismissed so that he could focus his efforts on [this case]" Opposition, p. 7:11-15. The Court does not find this explanation plausible. Mr. Gutierrez made no attempt to pursue his individual case and address his alleged mounting debt. Furthermore, Movants highlight that Mr.

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Gutierrez's debt likely exceeded applicable debt limits for chapter 13 cases and the Debtor concedes that Mr. Gutierrez allowed that case to be dismissed to stop foreclosure of the Irvine Property and the Vacant Lots. Therefore, it appears that Mr. Gutierrez did not have a legitimate belief that he could reorganize his affairs in that case.

In addition to the foregoing, the Debtor filed this skeletal petition just five days after the Gutierrez Case was dismissed and on the eve of a continued foreclosure sale. And as set forth above, the Court finds that the Debtor has not established a reasonable possibility of reorganizing its affairs.

For the foregoing reasons, the Court finds that the Debtor filed the petition as part of a scheme to hinder and delay Movants' foreclosure efforts which involved multiple bankruptcy filings. Therefore, Movants are entitled to relief under § 362(d)(4).

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED.

Movants are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1: Movants highlight that the Debtor is a suspended California limited liability company not authorized to conduct business in California and cites *Palm Valley Homeowners Association, Inc. v. Design MTC*, 85 Cal.App.4th 553, 560 (2000) for the proposition that the Debtor is disabled from participating in this bankruptcy case. To the extent Movants intended this as a request to strike the Debtor's Omnibus

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Opposition, the request is overruled. Based upon this Court's limited research on the issue, it appears that corporate suspension does not prevent an entity from seeking bankruptcy protection to wind up its affairs. *In re Bertuccio*, 414 B.R. 604, 618 (Bankr. N.D. Cal. 2008), *aff'd in part sub nom, Employment Dev. Dep't v. Bertuccio*, 2011 WL 1158022 (N.D. Cal. Mar. 28, 2011) ("[A] corporation, whose powers are suspended, may nonetheless file bankruptcy to wind up its affairs"); *In re Feature Homes, Inc.*, 116 B.R. 731, 733 (Bankr. E.D. Cal. 1990) ("[T]he subject Revenue and Tax Code forfeiture statutes purport to only revoke the corporate entity's right to enter into enforceable contracts and to protect itself in state court and do not address nor purport to affect that entities right to file for protection under the Federal Bankruptcy Code").

Note 2: The Debtor contends that it was not prepared to respond with an appraisal because it was allegedly caught off guard by how quickly Movants sought stay relief. To the extent the Debtor intended this as a request for a continuance to allow it time to obtain an appraisal, the request is denied. It appears that the Debtor has been in default under its loan obligations to the Movants for more than eleven months and sought bankruptcy protection to delay Movants' foreclosure efforts. Debtor's counsel is well seasoned in bankruptcy and should have anticipated the immediate need for an appraisal. Accordingly, the Court is unwilling to prejudice Movants any further by granting the Debtor a continuance to obtain an appraisal.

Note 3: The Court also notes that the Debtor contends that granting stay relief will prejudice other creditors, but the Debtor only has secured creditors. *See* Doc. No. 8.

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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#7.10 Hearing

RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2 Parcels of Industrial Zoned, Raw/Vacant Land in Adelanto, California, APN 0459-432-14-0-000 and APN 0459-432-22-0-000 . (Bach, Julian)

fr. 3-4-19

Docket 11

Tentative Ruling:

3/14/2019

For the reasons set forth below, the R/S Motions are GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 9] (the "Irvine Property R/S Motion")
2. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 11] (the "Vacant Lots R/S Motion," and together with the Irvine Property R/S Motion, the "R/S Motions")
3. Supplemental Proof of Service of Notice of Motion and Motion From [sic] the Automatic Stay [Doc. No. 12]
4. Debtor's Joint Opposition to Sterk Investments, Inc.'s Motion for Relief (1701 Irvine Ave., Newport Beach, CA 92660) and Motion for Relief (Vacant Lots) [Doc. No. 19] (the "Omnibus Opposition")
5. Order Continuing March 4th Relief from Stay Hearings [Doc. No. 20]
6. Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay [Real Property located at 1701 Irvine Avenue, Newport Beach, California] [Doc. No. 23] (the "Irvine Property Reply")
7. Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay [2 Parcels of Raw Land in Adelanto, California] [Doc. No. 24] (the "Vacant Lots Reply")

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8. Evidentiary Objections to the Declaration of Gustavo Gutierrez filed by Debtor Bona Fide Ventures LLC in Support of its Joint Opposition to Relief from Stay Motions [Doc. No. 25] (the "Evidentiary Objections")

I. Facts and Summary of Pleadings

Debtor-in-possession, Bona Fide Ventures LLC (the "Debtor"), filed this voluntary chapter 11 case on January 9, 2019 (the "Petition Date"). The Debtor owns five real properties:

1. 1701 Irvine Blvd., Newport Beach, CA 92660 (the "Irvine Property")
2. Vacant land [APN 0459-432-22] ("Lot 1")
3. Vacant land [APN 0459-432-14] ("Lot 2," and together with Lot 1, the "Vacant Lots")
4. Vacant land at El Privilegio Road, Adelanto, CA 92808 [APN 3210-571-04] (the "El Privilegio Lot")
5. 22760 Palos Verdes Drive East, Rancho Palos Verdes, CA 90275 (the "Palos Verdes Property")

Summary of R/S Motions

Sterk Investments, Inc. ("Movant") seeks relief from stay pursuant §§ 362(d)(1) and (d)(2) with respect to the Irvine Property and the Vacant Lots (together, the "Properties"). Movant states that in December 2017 it made a short-term loan to the Debtor in the principal amount of \$1,700,000 and that it presently holds a first priority lien in the amount of \$1,885,879.32 against the Irvine Property which is cross-collateralized by the Vacant Lots. Movant states that the loan is in default and that as of the filing of the R/S Motions, the Debtor had failed to make 8 monthly mortgage payments. Movant also states that the Irvine Property is encumbered by a tax lien in favor of the County of Orange in the amount of \$23,759.10, and the Vacant Lots are encumbered by tax liens in favor of the County of San Bernardino in the amount of \$15,791.58 and \$13,579.32, respectively.

Movant contends that cause exists to grant it stay relief with respect to the

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Properties because its interest is not adequately protected because the Debtor does not have any equity in the Properties and the Properties are not necessary for an effective reorganization. Movant attached appraisals which value the Irvine Property at \$1,725,000, Lot 1 at \$130,000 and Lot 2 at \$95,000, for a combined value of \$1,950,000. Movant argues that after applicable costs of sale, the Debtor does not have any equity in the Properties.

Summary of Omnibus Opposition

On February 26, 2019, the Debtor filed an untimely Omnibus Opposition to the R/S Motions [Doc. No. 19]. The Debtor contends that Movant has failed to carry its evidentiary burden because there is no evidence that the Properties are decreasing in value and the Debtor believes Movant's appraisals are not reliable. The Debtor states that it could not obtain its own appraisals in time to respond to the R/S Motions, but submits the declaration of the Debtor's principal, Mr. Gutavo Gutierrez who has significant knowledge of property values in the area.

With respect to the Irvine Property, the Debtor concedes that in its Schedule A, filed on January 23, 2019, it estimated the value of the Irvine Property to be \$1,700,000. However, the Debtor argues that since then a property located in close proximity to the Irvine Property sold for \$1,465,000, so based upon the larger square footage, Debtor believes the Irvine Property is likely worth \$1,900,000. The Debtor also questions the reliability of Movant's appraisal on the basis that in December 2017 Movant obtained an appraisal from the same appraiser valuing the Irvine Property at \$2,100,000. Debtor contends that Movant offers no justifiable grounds for the drastic price reduction and is missing certain information to determine whether it complies with applicable Appraisal Independence requirements.

Similarly, the Debtor argues that Movant's appraisals significantly undervalue the Vacant Lots. Debtor's Schedule A estimated the combined values to be \$950,000 because they are located in a highly desirable area. The Debtor also highlights that Movant's appraisal reflects that the same properties were sold in October 2017 for \$650,000 but fails to explain the significant priced reduction.

The Debtor argues that there is approximately \$2,650,000 worth of collateral securing Movant's debt, which leaves a significant equity cushion of 28.8% to

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adequately protect Movant's interests. The Debtor also says it would be amenable to the Court entering an adequate protection order that sets a specific deadline for the Debtor to sell the Properties or Movant could be granted stay relief.

The Debtor argues that the Properties are necessary for an effective reorganization because the Debtor intends to sell the Properties and use the proceeds to pay all creditors in full. Therefore, the Debtor argues that granting relief from stay will only prejudice the Debtor's other creditors.

Order Continuing Hearings to March 18

On February 27, 2019, this Court entered an *Order Continuing March 4th Relief from Stay Hearings* [Doc. No. 20], continuing the hearings on the R/S Motions to March 18, 2019 and extending the deadline for Movant to respond to the Omnibus Opposition.

Summary of Movant's Replies

Movant filed a timely response to the Omnibus Opposition. First, Movant highlights that the Debtor is a suspended corporation and is not authorized to conduct business. Movant argues that by Debtor's own admissions it has no ongoing business operations that generate income, no cash on hand, no receivables, no unsecured creditors and no historical income. Next, Movant states that the Debtor is in substantial default under its loan obligations, has failed to pay property taxes as they have come due, and allowed its insurance coverage for the Properties to lapse. As a result, on February 8, 2019 (post-petition), *Movant* had to advance an additional \$2,834 to provide insurance.

In response to the Debtor's contention that the Irvine Property is worth significantly more than Movant's appraisal reflects, Movant states that the Debtor fails to inform this Court that the Debtor had the property listed for sale on April 27, 2018 at a listing price of \$1,950,00 and was unable to sell the property. Movant also explains that the decrease in value reflects the Irvine Property's current condition because the property is vacant, unkept and in disrepair and Movant's appraiser estimates that it will take a minimum of \$100,000 to make the property marketable. Movant also argues that the Debtor does not have available funds to make the repairs

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and highlights that the Debtor failed to submit admissible evidence to controvert its appraised value.

With respect to the Vacant Lots valuations, Movant again highlights that the Debtor fails to attach any admissible evidence to support its valuations. Movant also explains that the decrease in value stems from the City of Adelanto's recent expansion of "the cannabis cultivation zone" which depressed all property values in that zone.

Movant argues that it has carried its burden of proof by establishing that the Debtor has no equity in the Properties and that the Debtor has failed to carry its burden on all other issues. Movant contends that the Debtor cannot show that the Properties are necessary for an effective reorganization because it is a suspended corporation that cannot conduct business or participate in this matter. Movant also argues that the Debtor has not established that it has anything to reorganize or the financial wherewithal to do so.

For the foregoing reasons, Movant requests that the Court grant it stay relief so that it can proceed with nonjudicial foreclosure proceedings that it commenced pre-petition and remain pending against the Properties.

II. Findings of Fact and Conclusions of Law

A. Evidentiary Objections [Note 1]

Movant asks this Court to strike paragraphs 7Ai and 7Aiii of the Gutierrez Declaration. The Court overrules the evidentiary objection in-part with respect to the following testimony: "I bases [sic] my valuation of the Irvine property and the vacant lots on the following: A: Irvine: i. My knowledge of the property values for the last several years in the neighborhoods in which the properties are located." As the sole principal of the debtor-owner of the Palos Verdes Property, Mr. Gutierrez is competent to offer lay opinion as to its value. *See In re Cocreham*, 2013 Bankr. LEXIS 3527, at *6-7 (Bankr. E.D. Cal. Aug. 23, 2013).

However, the Court sustains the evidentiary objection in-part with respect to paragraph 7Aiii on the basis that Mr. Gutierrez's testimony attempts to bring otherwise inadmissible hearsay evidence into the record. *See e.g., Cocreham*, 2013

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Bankr. LEXIS at *6-7 (citing Barry Russell, Bankruptcy Evidence Manual, Vol. II, § 701.2, p. 784-85 (2012-13)) ("the average debtor-homeowner . . . should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties, unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc"). The e-mail from Ms. Gay Lynn Barnes is inadmissible hearsay because it is not supported by a separate declaration from the declarant.

B. Cause Exists to Grant Relief From Stay Under § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Movant submitted evidence to support a finding that the subject Properties have a combined value of \$1,950,000 and are encumbered by a perfected deed of trust in favor of the Movant. The liens against the Properties and the expected costs of sale total \$2,095,009.32. Therefore, the Court finds that there is no equity in the Properties and that Movant is not protected by an adequate equity cushion. The Court also finds that Movant's interest is not adequately protected because the Debtor failed to maintain insurance on the Properties or pay real estate taxes, and because the Irvine Property appears to be in disrepair and the Debtor lacks necessary funds to prevent further deterioration to the Irvine Property. The Court finds that Movant has carried its burden of proof with respect to the Debtor's lack of equity and shifted the burden to the Debtor to demonstrate why stay relief is unwarranted.

The Debtor submitted the Gutierrez Declaration in which Mr. Gutierrez opines that the value of the Irvine Property is \$1,900,000 and the Vacant Lots are worth a combined value of \$950,000. **[Note 2]** However, because Mr. Gutierrez is not an expert, the Court accords only minimal weight to his testimony and finds it less probative than Movant's regarding the current fair market values of the Properties. Furthermore, the Court takes judicial notice of the Debtor's Schedule A [Doc. No. 8], filed on January 23, 2019 – only a month prior to the filing of Debtor's Omnibus Opposition – in which the Debtor listed a present value of \$1,700,000 for the Irvine Property. The Court is not persuaded by Mr. Gutierrez's testimony concerning the

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significant increase in his opinion of that property's value.

Based on the foregoing, the Court finds that Movant is entitled to relief from stay with respect to all three Properties pursuant to § 362(d)(1).

C. Cause Exists to Grant Relief From Stay Under § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the Court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

As discussed above, the Court finds that Movant has carried its burden of proving that the Debtor does not have any equity in the Properties. Therefore, the first prong is satisfied.

To show that there is a necessity for effective reorganization, a debtor must show that there can be an effective reorganization in the sense that there is "a reasonable possibility of a successful reorganization within a reasonable time." *United Sav. Ass'n of Texas v. Timber of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 367, 108 S. Ct. 626, 89 L. Ed. 2d 740 (1988).

The Court finds that the Debtor has not carried its burden of demonstrating that there is a reasonable possibility of a successful reorganization within a reasonable time. First, the Debtor states that it is marching quickly towards a complete financial reorganization and that it intends to propose a 100% plan of reorganization funded by sale of certain of its properties. However, as of the preparation of this tentative ruling, the Debtor has not filed an application to employ any brokers. Nor does the Debtor offer any testimony about the form its plan would take or when it could be proposed and brought to fruition. [Note 3] Second, and more importantly, based upon Movant's evidence of value, it does not appear that the Debtor could sell the Properties under § 363(f) without Movant's consent because the Properties would not likely generate sale prices that exceeds existing liens.

Therefore, the Court finds that Movant has carried its burden of demonstrating that the Debtor does not have any equity in the Properties and the Debtor has failed to demonstrate that the Properties are necessary for an effective reorganization.

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Accordingly, Movant is entitled to relief from stay under § 362(d)(2).

III. Conclusion

For the reasons set forth above, the R/S Motions are GRANTED.

Movant is directed to lodge conforming proposed orders for each motion, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1: Movant highlights that the Debtor is a suspended California limited liability company not authorized to conduct business in California and cites *Palm Valley Homeowners Association, Inc. v. Design MTC*, 85 Cal.App.4th 553, 560 (2000) for the proposition that the Debtor is disabled from participating in this bankruptcy case. To the extent Movant intended this as a request to strike the Debtor's Omnibus Opposition, the request is overruled. Based upon this Court's limited research on the issue, it appears that corporate suspension does not prevent an entity from seeking bankruptcy protection to wind up its affairs. *In re Bertuccio*, 414 B.R. 604, 618 (Bankr. N.D. Cal. 2008), *aff'd in part sub nom, Employment Dev. Dep't v. Bertuccio*, 2011 WL 1158022 (N.D. Cal. Mar. 28, 2011) ("[A] corporation, whose powers are suspended, may nonetheless file bankruptcy to wind up its affairs"); *In re Feature Homes, Inc.*, 116 B.R. 731, 733 (Bankr. E.D. Cal. 1990) ("[T]he subject Revenue and Tax Code forfeiture statutes purport to only revoke the corporate entity's right to enter into enforceable contracts and to protect itself in state court and do not address nor purport to affect that entities right to file for protection under the Federal Bankruptcy Code").

Note 2: The Debtor contends that it was not prepared to respond with appraisals

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because it was allegedly caught off guard by how quickly Movant sought stay relief. To the extent the Debtor intended this as a request for a continuance to allow it time to obtain appraisals, the request is denied. It appears that the Debtor has been in default under its loan obligations to the Movants for more than eight months and sought bankruptcy protection to delay Movant's foreclosure efforts. Debtor's counsel is well seasoned in bankruptcy and should have anticipated the immediate need for appraisals. Accordingly, the Court is unwilling to prejudice Movant any further by granting the Debtor a continuance to obtain appraisals.

Note 3: The Court also notes that the Debtor contends that granting stay relief will prejudice other creditors, but the Debtor only has secured creditors. *See* Doc. No. 8.

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By
Matthew D. Resnik

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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-10237 Bona Fide Ventures LLC

Chapter 11

#7.20 Hearing
RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1701 Irvine Avenue, Newport Beach, California 92660 . (Bach, Julian)

fr. 3-4-19

Docket 9

Tentative Ruling:

3/14/2019

See Cal. No. 7.1, incorporated herein by reference.

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By
Matthew D. Resnik

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-10379 Adrienne Marcia Moore

Chapter 11

#8.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Flex; VIN# 2FMGK5D86GBA02331 .

Docket 13

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

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

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

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

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

CONT... Adrienne Marcia Moore

Chapter 11

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

Party Information

Debtor(s):

Adrienne Marcia Moore

Represented By
Shannon O.C. Nelson

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-10821 Florida Joy Fernandez

Chapter 7

#9.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3042 Honolulu Avenue, Unit C, La Crescenta, California 91214 . (Bach, Julian)

Docket 9

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

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

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

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

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

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Central District of California
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Judge Ernest Robles, Presiding
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Monday, March 18, 2019

Hearing Room 1568

10:00 AM

CONT... Florida Joy Fernandez

Chapter 7

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

Party Information

Debtor(s):

Florida Joy Fernandez

Represented By
Brian J Soo-Hoo

Trustee(s):

Sam S Leslie (TR)

Pro Se

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

Monday, March 18, 2019

Hearing Room 1568

10:00 AM

2:19-12020 Access Global solutions, Inc.

Chapter 7

#10.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11011 South Meads Avenue, Orange, CA 92869 . (Weber, Edward)

Docket 11

Tentative Ruling:

3/14/2019

Tentative Ruling:

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

If there are no appearances as the hearing, the Court is prepared to find that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy filings affecting the Property. Declaration of David Cohen in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real

**United States Bankruptcy Court
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Los Angeles
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CONT... Access Global solutions, Inc.

Chapter 7

property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

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

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

Party Information

Debtor(s):

Access Global solutions, Inc.

Represented By
Dominic Afzali

Trustee(s):

David M Goodrich (TR)

Pro Se

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#1.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01386. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Paul Shangha. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 4-2-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01387 Elissa D. Miller, solely in her capacity as chapte v. OJ Insulation, L.P., a

#2.00 Status HearingRE: [1] Adversary case 2:18-ap-01387. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against OJ Insulation, L.P., a Delaware limited partnership. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Pursuant to several stipulations approved by the Court, Defendant's deadline to respond to the Complaint has been extended to April 12, 2019. Having reviewed the Unilateral Status Report submitted by the Plaintiff, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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QUIGG LA11, LLC

Chapter 7

- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

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CONT...

QUIGG LA11, LLC

Chapter 7

- may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) In view of the parties' representation that they have engaged in preliminary settlement discussions, the Court will not order the matter to formal mediation at this time.
 - 3) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Defendant(s):

OJ Insulation, L.P., a Delaware

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01388 Elissa D. Miller, solely in her capacity as chapte v. LC Engineering Group,

#3.00 Status HearingRE: [1] Adversary case 2:18-ap-01388. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against LC Engineering Group, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

This action has settled. All litigation dates and deadlines previously ordered by the Court are VACATED. A continued Status Conference to monitor consummation of the settlement shall be held on **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Defendant(s):

LC Engineering Group, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01389 Elissa D. Miller, solely in her capacity as chapt v. Creative Sound & Vision,

#4.00 Status HearingRE: [1] Adversary case 2:18-ap-01389. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Creative Sound & Vision, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Creative Sound & Vision, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
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CONT... QUIGG LA11, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01390 Elissa D. Miller, solely in her capacity as chapte v. Mulligan's Painters, Inc.,

#5.00 Status HearingRE: [1] Adversary case 2:18-ap-01390. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mulligan's Painters, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for

**United States Bankruptcy Court
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CONT...

QUIGG LA11, LLC

Chapter 7

- dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the

**United States Bankruptcy Court
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CONT...

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Chapter 7

requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) In view of the parties' representation that they have engaged in preliminary settlement discussions, the Court will not order the matter to formal mediation at this time.
- 3) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mulligan's Painters, Inc., a

Pro Se

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#6.00 Status HearingRE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Plaintiff and Defendant have agreed upon an open-ended extension of Defendant's deadline to respond to the Complaint to enable the parties to engage in settlement discussions. Having reviewed the Unilateral Status Report submitted by the Plaintiff, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

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QUIGG LA11, LLC

Chapter 7

- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

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Chapter 7

- may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) In view of the parties' representation that they have engaged in preliminary settlement discussions, the Court will not order the matter to formal mediation at this time.
 - 3) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

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CONT... QUIGG LA11, LLC

Chapter 7

Defendant(s):

Premium Energy Solutions, Inc., a Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her
Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)
Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01392 Elissa D. Miller, solely in her capacity as chapte v. State Plastering, Inc., a

#7.00 Status HearingRE: [1] Adversary case 2:18-ap-01392. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against State Plastering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

State Plastering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Chapter 7

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01393 Elissa D. Miller, solely in her capacity as chapte v. Sunland Wood Products,

#8.00 Status HearingRE: [1] Adversary case 2:18-ap-01393. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Sunland Wood Products, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Tentative Ruling:

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **9/24/2019**. (If the

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Chapter 7

- motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

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- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The parties state that they have not yet engaged in any settlement discussions. Because neither party requests formal mediation, the Court will not order the matter to formal mediation at this time. However, the Court expects the parties to attempt in good faith to settle this action and will order formal mediation in the future if meaningful attempts at settlement are not undertaken.
- 3) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

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CONT... QUIGG LA11, LLC

Chapter 7

Defendant(s):

Sunland Wood Products, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01394 Elissa D. Miller, solely in her capacity as chapte v. Grandmaison

#9.00 Status HearingRE: [1] Adversary case 2:18-ap-01394. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Grandmaison Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Grandmaison Construction, Inc., a

Represented By
Mark T Young

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

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Jessica Vogel

Chapter 7

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01395 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#10.00 Status HearingRE: [1] Adversary case 2:18-ap-01395. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

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Defendant has not timely responded to the Complaint. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) By no later than **April 23, 2019**, Plaintiff shall have obtained entry of Defendant's default and shall have filed a Motion for Default Judgment.
- 2) The Motion for Default Judgment shall be filed on a negative-notice basis, pursuant to Local Bankruptcy Rule 9013-1(o).
- 3) All litigation dates and deadlines previously set by the Court are VACATED.
- 4) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. If default judgment has been entered, the Status Conference will go off calendar.

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

Party Information

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Chapter 7

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01396 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#11.00 Status HearingRE: [1] Adversary case 2:18-ap-01396. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation, Cemex Construction Materials Pacific, LLC, a Delaware limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

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See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Cemex Construction Materials

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

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Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01397 Elissa D. Miller, solely in her capacity as chapt v. Allied Roofing and

#12.00 Status HearingRE: [1] Adversary case 2:18-ap-01397. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Allied Roofing and Waterproofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Allied Roofing and Waterproofing,

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#13.00 Status HearingRE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Chapter 7

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01399 Elissa D. Miller, solely in her capacity as chapte v. Old World Precast, Inc., a

#14.00 Status HearingRE: [1] Adversary case 2:18-ap-01399. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Old World Precast, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Old World Precast, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Chapter 7

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01400 Elissa D. Miller, solely in her capacity as chapte v. RP Designs, Inc., a

#15.00 Status HearingRE: [1] Adversary case 2:18-ap-01400. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against RP Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

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See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

RP Designs, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Chapter 7

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01401 Elissa D. Miller, solely in her capacity as chapte v. Truskett et al

#16.00 Status HearingRE: [1] Adversary case 2:18-ap-01401. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Robert L. Truskett, Robert L. Truskett Roofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

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See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Robert L. Truskett

Pro Se

Robert L. Truskett Roofing, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
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Jessica Vogel

Chapter 7

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01402 Elissa D. Miller, solely in her capacity as chapte v. Frank H. Roll-Off

#17.00 Status HearingRE: [1] Adversary case 2:18-ap-01402. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Frank H. Roll-Off Service, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Frank H. Roll-Off Service, an

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#18.00 Status HearingRE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01405 Elissa D. Miller, solely in her capacity as chapte v. American Express

#19.00 Status HearingRE: [1] Adversary case 2:18-ap-01405. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against American Express Company, a New York Corporation, American Express Travel Related Services Company, Inc., a New York Corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

American Express Company, a New

Pro Se

American Express Travel Related

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

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CONT... QUIGG LA11, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#20.00 Status HearingRE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 8, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01407 Elissa D. Miller, solely in her capacity as chapte v. HD Supply Construction

#21.00 Status HearingRE: [1] Adversary case 2:18-ap-01407. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against HD Supply Construction Supply Group, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendant has timely demanded a jury trial in this avoidance action, has not filed a proof of claim against the estate, and consents to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."). Because both Plaintiff and Defendant have consented to the Bankruptcy Court's entry of final judgment, the jury trial will be conducted by the Bankruptcy Court. *See* Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only with the consent of all parties).
- 2) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.

**United States Bankruptcy Court
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Los Angeles
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Tuesday, March 19, 2019

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QUIGG LA11, LLC

Chapter 7

- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion

**United States Bankruptcy Court
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QUIGG LA11, LLC

Chapter 7

in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) A jury trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) In view of the parties' representation that they have engaged in preliminary settlement discussions, the Court will not order the matter to formal mediation at this time.
- 4) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... QUIGG LA11, LLC

Chapter 7

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

HD Supply Construction Supply

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01408 Elissa D. Miller, solely in her capacity as chapte v. Cook Development

#22.00 Status HearingRE: [1] Adversary case 2:18-ap-01408. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Cook Development Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendant has timely demanded a jury trial in this avoidance action, has not filed a proof of claim against the estate, and consents to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."). Because both Plaintiff and Defendant have consented to the Bankruptcy Court's entry of final judgment, the jury trial will be conducted by the Bankruptcy Court. *See* Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only with the consent of all parties).
- 2) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.

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- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion

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in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) A jury trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) Pursuant to the parties' request, the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
- 4) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Cook Development Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapte v. Hankey Capital, LLC, a

#23.00 Status HearingRE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Chapter 7

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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#24.00 Status HearingRE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
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Jessica Vogel

Chapter 7

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01411 Elissa D. Miller, solely in her capacity as chapte v. Mumford

#25.00 Status HearingRE: [1] Adversary case 2:18-ap-01411. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Scott Mumford. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Post-Petition Transfers, (3) Preservation of Preferential and Post-Petition Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Scott Mumford

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01412 Elissa D. Miller, solely in her capacity as chapte v. Danmar Steel, Inc., a

#26.00 Status HearingRE: [1] Adversary case 2:18-ap-01412. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Danmar Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Danmar Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapte v. JSA Engineering, Inc., a

#27.00 Status HearingRE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
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Los Angeles
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Tuesday, March 19, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01414 Elissa D. Miller, solely in her capacity as chapte v. B&R Construction, Inc., a

#28.00 Status HearingRE: [1] Adversary case 2:18-ap-01414. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against B&R Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendant has timely demanded a jury trial in this avoidance action. Defendant is not entitled to a jury trial because it has filed a Proof of Claim against the estate. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58, 109 S. Ct. 2782, 2799, 106 L. Ed. 2d 26 (1989). The Court will conduct a bench trial in this action.
- 2) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not

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QUIGG LA11, LLC

Chapter 7

- available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of

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Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) A bench trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) In view of the parties' representation that they have engaged in preliminary settlement discussions, the Court will not order the matter to formal mediation at this time.
- 4) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By

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Chapter 7

David M Reeder

Defendant(s):

B&R Construction, Inc., a California Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR) Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01415 Elissa D. Miller, solely in her capacity as chapte v. Certified Tile, Inc., a

#29.00 Status HearingRE: [1] Adversary case 2:18-ap-01415. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Certified Tile, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Certified Tile, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

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Jessica Vogel

Chapter 7

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01416 Elissa D. Miller, solely in her capacity as chapt v. J.M.I. Steel, Inc., a

#30.00 Status HearingRE: [1] Adversary case 2:18-ap-01416. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against J.M.I. Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

J.M.I. Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01417 Elissa D. Miller, solely in her capacity as chapte v. JC Drywall Designs, Inc.,

#31.00 Status HearingRE: [1] Adversary case 2:18-ap-01417. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JC Drywall Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/19/19 (updated in view of Defendant's filing of an Answer on March 18, 2019):

Defendant filed an untimely Answer to the Complaint on March 18, 2019, the day prior to the Status Conference. Because Defendant's default has not been entered, the Court will deem the Answer to have been timely filed. Having reviewed the Unilateral Status Reports submitted by both parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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- e) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

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- may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The Court will not order formal mediation at this time. However, the Court expects the parties to attempt in good faith to settle this action and will order formal mediation in the future if meaningful attempts at settlement are not undertaken.
 - 3) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

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

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

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Chapter 7

Defendant(s):

JC Drywall Designs, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01418 Elissa D. Miller, solely in her capacity as chapte v. JH Plumbing

#32.00 Status HearingRE: [1] Adversary case 2:18-ap-01418. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JH Plumbing Corporation, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JH Plumbing Corporation, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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CONT... QUIGG LA11, LLC

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01419 Elissa D. Miller, solely in her capacity as chapte v. Acosta Stone, an

#33.00 Status HearingRE: [1] Adversary case 2:18-ap-01419. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Acosta Stone, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Acosta Stone, an unknown business

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01420 Elissa D. Miller, solely in her capacity as chapte v. Vista General

#34.00 Status HearingRE: [1] Adversary case 2:18-ap-01420. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Vista General Engineering Company, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Vista General Engineering

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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2:19-11011 2009 Raymond LLC

Chapter 7

#35.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Matthew Chen (attorney Ji Yoon Kim) . (Serrano, Vera) Additional attachment(s) added on 1/31/2019 (Serrano, Vera).

Docket 1

Tentative Ruling:

3/18/2019

For the reasons set forth below, by separate order the Court will require YMP to show cause why the Involuntary Petition should not be dismissed, based upon the Court's inability to enter an order for relief as a result of a bona fide dispute as to Raymond's liability.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Proof of Service [Doc. No. 5]
- 3) Joint Status Report [Doc. No. 6]

I. Facts and Summary of Pleadings

On January 31, 2019 (the "Petition Date"), YMP Property Management, LLC ("YMP") filed an *Involuntary Petition Against a Non-Individual* (the "Involuntary Petition"), seeking relief under Chapter 7, against 2009 Raymond LLC ("Raymond"). YMP is represented by LK Professional Law Group; Raymond is represented by Jamie Jiyeon Kim.

According to the Involuntary Petition, Raymond owes the YMP \$265,000.00 for "repayment of note."

The Clerk of the Court issued an Involuntary Summons on January 31, 2019. Doc. No. 3. YMP served the Involuntary Summons upon Raymond on February 13, 2019. Doc. No. 5.

Raymond has not contested the Involuntary Petition. On March 13, 2019, YMP and Raymond filed a Joint Status Report (the "Status Report"). According to the

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Status Report, the Involuntary Petition corresponds to prior litigation before the Los Angeles Superior Court (the "State Court Action").

The Court takes judicial notice of the record in the State Court Action, which has not been presented to the Court by the parties. Specifically, On December 11, 2018, YMP filed a *Complaint for Breach of Contract* (the "Complaint") against Raymond. The Complaint alleges that YMP loaned Raymond \$265,000 and that Raymond defaulted on the repayments. In its Answer to the Complaint, Raymond alleges that the loan was extended in connection with the acquisition of property located at 2009 Raymond Avenue, Los Angeles, CA 90007 (the "Property"). Raymond alleges that it borrowed funds from YMP in reliance upon YMP's representation that YMP would insure that development plans for the Property would be approved. Raymond further alleges that YMP failed to take reasonable efforts to obtain the approval of the plans, reducing the value of the Property. On January 25, 2019, Raymond filed a Cross-Complaint against YMP, asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, fraud, tortious interference with prospective economic advantage, unfair business practices, and breach of contract by a third party beneficiary.

In the Status Report, YMP and Raymond state that they "are actively negotiating settlement." The parties state that they will be ready for trial on the involuntary petition in May 2019.

II. Findings and Conclusions

Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Section 303(h) provides that if "the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed." Bankruptcy Rule 1011(b) requires that "[d]efenses and

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CONT... 2009 Raymond LLC

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objections to the petition ... be filed and served within 21 days after service of the summons" Bankruptcy Rule 1013(a) requires the court to "determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order." Bankruptcy Rule 1013(b) provides that if a defense to the petition is not timely filed, "the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition."

Bankruptcy Rule 1010(a) provides that an involuntary summons shall be served "in the manner provided for service of a summons and complaint by Rule 7004(a) or (b)." Bankruptcy Rule 7004(e) requires that the summons be served within seven days of issuance.

Here, the Involuntary Summons was issued on January 31, 2019 but was not served until February 13, 2019. Because the Involuntary Summons was not served within the time prescribed by Bankruptcy Rule 7004(e), Raymond's obligation to contest the Involuntary Petition was not triggered. Therefore, the Court is not required to enter an order for relief at this time.

Based upon its review of the Status Report and the pleadings on file in the State Court Action, it appears that the parties have misunderstood the purpose of involuntary bankruptcy. "The central policy behind involuntary petitions, ... is to protect the threatened depletion of assets or to prevent the unequal treatment of similarly situated creditors. Creditors are justified in filing an involuntary bankruptcy against a debtor where exclusive bankruptcy powers and remedies may be usefully invoked to recover transferred assets, to insur[e] an orderly ranking of creditors' claims and to protect against other creditors obtaining a disproportionate share of a debtor's assets." *In re Marciano*, 446 B.R. 407, 419 (Bankr. C.D. Cal. 2010), *aff'd*, 459 B.R. 27 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013) (internal citations and quotations omitted). Here, it appears that YMP filed the Involuntary Petition not to safeguard against the depletion of Raymond's assets by other creditors, but rather to remove the disputes at issue in the State Court Action to the Bankruptcy Court.

The Court may not enter an order for relief against Raymond if YMP's claim is "the subject of a bona fide dispute as to liability or amount." § 303(b)(1), (h)(1). Based upon its review of the record in the State Court Action, it appears that the indebtedness alleged by YMP is subject to a bona fide dispute. By separate order, the Court will require YMP to show cause why the Involuntary Petition should not be dismissed, based on the Court's inability to enter an order for relief against Raymond

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given the bona fide dispute as to Raymond's liability.

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

Party Information

Debtor(s):

2009 Raymond LLC

Pro Se

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2:17-22974 Rideshare Port Management, LLC

Chapter 11

#36.00 Hearing
RE: [154] second amended joint disclosure statement

fr.11-13-18

Docket 129

***** VACATED *** REASON: Cont by Stip to 4/2/19 at 10AM**

Tentative Ruling:

11/9/2018

For the reasons set forth below, the Motions are DENIED without prejudice.

Pleadings Filed and Reviewed

1. Rideshare Port Management Inc. [2:17-bk-22974-ER]:

- A. Notice of Motion and Motion Under 11 U.S.C. §1112(b)(1) to Convert, Dismiss, or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgement Thereon [Doc. No. 129] (the "Rideshare MTD")
 - i. Declaration of Gary Baden
- B. Opposition of Debtor and Debtor In Possession to Motion of the United States Trustee Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 134] (the "Rideshare Opposition")
- C. No reply is on file

2. Red Booth, Inc. [2:17-bk-22975-ER]:

- A. Notice of Motion and Motion Under 11 U.S.C. §1112(b)(1) to Convert, Dismiss, or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgement Thereon [Doc. No. 135] (the "Red Booth MTD")
- B. Opposition of Debtor and Debtor In Possession to Motion of the United States Trustee Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 140] (the "Red Booth Opposition")
- C. No reply is on file

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CONT... Rideshare Port Management, LLC

Chapter 11

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC ("Rideshare") (Case No. 2:17-bk-22974-ER) and Red Booth, Inc. (Case No. 2:17-bk-22975-ER) ("Red Booth," and together with Rideshare, the "Debtors"), filed separate petitions for relief under chapter 11 on October 23, 2017. The Debtors have not moved for substantive consolidation or joint administration but state that they have a working relationship and their businesses are codependent.

On February 9, 2018, the Debtors filed a joint disclosure statement and plan [Rideshare Doc Nos. 53, 54; Red Booth Doc Nos. 69, 70]. At a hearing on April 5, 2018, the Court found that the joint disclosure statement did not contain adequate information, directed the Debtors to file an amended joint disclosure statement and amended plan, and set a deadline of July 24, 2018 for the Debtors to obtain confirmation and approval of the amended pleadings. *See* Rideshare Doc. No. 76; Red Booth Doc No. 103.

On May 11, 2018, the Debtors filed their first amended joint disclosure statement and first amended plan [Rideshare Doc. Nos. 94, 95; Red Booth Doc Nos. 114, 115]. The Court conducted a hearing on the adequacy of the first amended joint disclosure statement on July 5, 2018. In advance of the hearing, the Court posted a tentative ruling indicating the Court's intent to deny the motion for approval of the first amended joint disclosure statement with prejudice based upon the Court's determination that the first amended joint disclosure statement still lacked adequate information and the first amended joint plan was patently unconfirmable. *See* Rideshare Doc. No. 114; Red Booth Doc No. 132.

Counsel for the Debtors appeared at the hearing and asked whether the tentative ruling precluded the Debtors from amending the disclosure statement and plan and trying to get the outstanding issues resolved. Audio transcript, 11:16:32 a.m. – 11:16:40 a.m. The Court stated on the record that it was persuaded to reconsider setting a hearing on an Order to Show Cause why the cases should not be dismissed, "to allow [the Debtors] an opportunity to negotiate further and get to a confirmable plan." Audio transcript, 11:16:41 a.m. – 11:17:02 a.m.

The Court notes that the amended tentative ruling only reflects that it was

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"amended after hearing to remove date for Order To Show Cause previously referenced in the tentative ruling" [Rideshare Doc. No. 114; Red Booth Doc No. 132], and that the order denying approval of the first amended joint disclosure statement in the Rideshare case states that such denial is with prejudice [Rideshare Doc. No. 124]. **[Note 1]** However, it was and remains the Court's intention to permit the Debtors to file a second amended joint disclosure statement and joint plan.

UST's Motions to Convert, Dismiss or Appoint a Chapter 11 Trustee

The Office of the United States Trustee (the "UST") filed separate *Motions to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* in both Debtors' cases. The UST recommends that the cases be dismissed based upon the following:

- Rideshare:
 - An order denying the adequacy of debtor's Disclosure Statement was entered on 7/16/18 (PACER Dkt. #124)
 - The Debtor has failed to provide sufficient evidence of worker's compensation insurance. Debtor's previously submitted proof of worker's compensation insurance showed an expiration date of 7/2/18
 - Third quarter UST fees for 2018 are fully accrued and must be paid no later than 10/31/18
 - Debtor owns no real property and at the time of filing, listed only \$5,631.98 in cash. Debtor had no accounts receivables and no inventory. Additionally, the last filed Monthly Operating Report ("MOR") for the period ending August 2018 shows a total of \$2,157 in three accounts consisting of \$1,574.39 in the general DIP account, \$358.51 in the payroll account, and \$224.10 in the tax account. Debtor has not filed its September MOR which was due no later than October 15, 2018. Thus, the Debtor's schedules do not list any meaningful assets that a trustee can administer, so based on the evidence currently available, conversion would not appear to benefit creditors.
- Red Booth:
 - The Court denied the adequacy of debtor's Disclosure Statement with prejudice on 7/12/18 (PACER Dkt. #132)

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- The Debtor has failed to provide sufficient evidence of worker's compensation insurance. Debtor's previously submitted proof of worker's compensation insurance showed an expiration date of 8/13/18
- Third quarter UST fees for 2018 are fully accrued and must be paid no later than 10/31/18
- Debtor owns no real property and at the time of filing, listed only \$199.62 in cash. Debtor had no accounts receivables and no inventory. Additionally, the last filed Monthly Operating Report ("MOR") for the period ending August 2018 shows a total of \$209.07 in three accounts consisting of \$69.09 in the general DIP account, \$7.94 in the payroll account, and \$129.04 in the tax account. Debtor has not filed its September MOR which was due no later than October 15, 2018. Thus, the Debtor's schedules do not list any meaningful assets that a trustee can administer, so based on the evidence currently available, conversion would not appear to benefit creditors.

Debtors' Oppositions

Rideshare

Debtors state that since denial of the first amended joint disclosure statement, the Debtors have been diligent in their reorganizational efforts and should be afforded the opportunity to confirm a plan. The Debtors have engaged in ongoing settlement negotiations with their principals and objecting creditors Kaushaal Laxmee ("Laxmee"), Gary Oganessian, Alex Lichtenman and Howard Miller (collectively, the Objecting Creditors") respecting a consensual plan and consensual treatment of the claims. The parties believed they had reached consensual terms and were in the process of documenting the settlement and revising the plan but discovered a material misunderstanding that requires further negotiations. The Debtors cannot assure the Court, UST or parties in interest that the open issues will be resolved, but assert that it is in the best interest of Debtors' creditors to allow the Debtors additional time to negotiate. Therefore, Debtors request that the Court set a January 31, 2019 deadline for them to file a further amended joint disclosure statement and plan.

In the meantime, Rideshare states that it is in compliance with the deficiencies identified by the UST as follows: (i) proof of current Worker's Compensation

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insurance is attached to the Declaration of Rattan Joea (the "Roea Decl.") as Exhibit 1; (ii) Rideshare has paid its 3rd quarter UST fees and proof of payment is attached to the Roea Decl. as Exhibit 2; and (iii) a copy of its September MOR is attached to the Roea Decl. as Exhibit 3.

Debtors also submit that they are viable and profitable businesses that were forced to file for bankruptcy because of pending litigation and the resulting financial drain. The Debtors are otherwise current on all obligations and believe they can become more profitable in the future. Further, the Debtors' value stems from their ability to operate as a going concern and any liquidation value is not significant. If the Debtors are forced to liquidate, they will be forced to fire employees and creditors will receive little if anything. The Debtors also highlights that no creditors have joined in on the UST's request to dismiss. The Debtors submit that appointing a chapter 11 trustee is not in the best interest of the estate because it will only lead to further administrative claims and costs. The Debtors highlight that the UST has not alleged any fraud, dishonesty, or mismanagement.

Red Booth

Red Booth's opposition is substantially similarly to Rideshare's. However, in addition to the foregoing arguments, Red Booth states that it is in compliance with the deficiencies identified by the UST as follows: (i) Red Booth no longer has any employees and therefore does not maintain Worker's Compensation insurance; (ii) Red Booth has paid its 3rd quarter UST fees and proof of payment is attached to the Roea Decl. as Exhibit 1; and (iii) a copy of its September MOR is attached to the Roea Decl. as Exhibit 2.

UST's Replies

As of the preparation of this tentative ruling, the UST has not filed replies.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause" including, among other things: "(A) substantial or continuing loss to or diminution of the estate and the absence of a

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reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(E) failure to comply with an order of the court;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

Here, the Debtors submit that they have cured any outstanding deficiencies identified by the UST with respect to insurance, quarterly fees, and monthly operating reports. Further, it appears the ambiguous record led the UST to believe that the Debtors could not file a joint amended disclosure statement and, as a result, no further purpose was served by keeping these cases in bankruptcy. However, because this Court orally modified its ruling denying the first amended joint disclosure statement, to remove the portion of the ruling contemplating denial with prejudice, the Court finds it appropriate to permit the Debtors a *final* opportunity to propose an amended joint disclosure statement as set forth below.

The Debtors are directed to remain in *timely* compliance with applicable filing and reporting requirements in future.

III. Conclusion

For the reasons stated above, the Motions are DENIED without prejudice. The Debtors shall have until no later than **January 31, 2019** to file a second amended joint disclosure statement and plan.

The Court will conduct a hearing on the adequacy of the second amended joint disclosure statement on **March 19, 2019 at 10:00 a.m.**

If the Court does not approve the adequacy of the disclosure statement at that hearing, the Court will issue an order after the hearing dismissing these cases pursuant to 1112(b)(4)(A) and (J) without further notice or hearing.

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The Debtors are directed to lodge conforming proposed orders incorporating this tentative ruling by reference within 7 days of the hearing.

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

Note 1: There is no order denying the motion for approval of the first amended joint disclosure statement in the Red Booth case because no proposed order has ever been lodged.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22974 Rideshare Port Management, LLC

Chapter 11

#37.00 Hearing
RE: [157] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.

Docket 157

*** VACATED *** REASON: Cont by Stip to 4/2/19 at 10AM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

Chapter 11

#38.00 Hearing
RE: [161] second amended joint disclosure statement

FR. 11-13-18

Docket 135

***** VACATED *** REASON: Cont by Stip to 4/2/19 at 10AM**

Tentative Ruling:

11/9/2018

See Calendar No. 121, incorporated herein by this reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

Chapter 11

#39.00 Hearing
RE: [164] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.

Docket 164

***** VACATED *** REASON: Cont by Stip to 4/2/19 at 10AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#40.00 HearingRE: [1635] Motion /Notice To Approve (I) Settlement and Asset Purchase Agreement By And Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and Oncology Technology Associates, LLC and (II) Assumption and Assignment of Certain Contracts and Leases; Declaration of Richard G. Adcock In Support Thereof

Docket 1635

Tentative Ruling:

3/18/2019

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

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve (I) Settlement and Asset Purchase Agreement By and Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and Oncology Technology Associates, LLC and (II) Assumption and Assignment of Certain Contracts and Leases [Doc. No. 1635] (the "Motion")
 - a) Submission of Signature Page of Declaration of Richard G. Adcock in Support of [Motion] [Doc. No. 1657]
- 2) Opposition papers:
 - a) Limited Objection to [Motion] [filed by UnitedHealthcare Insurance Company] [Doc. No. 1741]
 - b) McKesson Specialty Care Distribution Corp.'s Reservation of Rights in Regards to [Motion] [Doc. No. 1743]
- 3) Omnibus Reply to Objections to [Motion] [Doc. No. 1827]
- 4) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 1744]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the

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Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtor Verity Medical Foundation ("VMF") is party to a *Services Agreement* dated April 1, 2018 (the "Services Agreement") with Oncology Technology Associates, LLC ("OTA"), under which OTA manages oncology medical practices at certain medical clinics operated by VMF (the "Clinics").

Debtors seek approval of a *Settlement and Asset Purchase Agreement* dated February 25, 2019 (the "Agreement"). The Agreement (1) provides for the termination of the Services Agreement between VMF and OTA, (2) provides for the sale of certain assets of the Clinics to OTA, and (3) provides for the assignment to OTA of various contracts assumed by the Debtors (collectively, the "Designated Contracts").

Limited objections to the Motion filed by McKesson Specialty Care Distribution Corp. and UnitedHealthcare Insurance Company have been resolved.

The Official Committee of Unsecured Creditors has no objection to the Motion.

II. Findings and Conclusions

A. The Court Approves the Sale of the Clinics' Assets to OTA

The Court approves the private sale of the Clinic's assets to OTA, for the purchase price of \$500,000. Section 363(b) permits the debtor or trustee to sell estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Court finds that the sale provides optimal value to the estate. The sale will generate \$500,000 funds for the estate, will allow the Clinics to continue to operate, and will relieve the Debtors of liability for damages that would otherwise result from rejection of the Designated Contracts.

Pursuant to § 363(f), the sale of the assets is free and clear of any and all liens, claims, and interests. Any secured creditors' liens will attach to the proceeds of the sale to the same extent, and with the same validity and priority, as those liens had prior to the sale. Holders of liens, claims, and interests have received notice of the Motion, and by failing to object are deemed to consent to the sale pursuant to § 363(f)

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B. The Court Approves the Settlement with OTA

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Applying the *A&C Properties* factors, the Court finds that the Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors. The Agreement resolves any dispute over OTA's right to receive payment for postpetition services rendered under the Services Agreement. In the absence of the Agreement, the Debtors would be required to reject the Services Agreement to avoid continued losses from the operation of the Clinics. Such rejection would expose the estate to substantial rejection damages. In addition, the Agreement provides that employees working at the Clinics will be hired by OTA, saving the Debtors from absorbing the costs that would otherwise be associated with the employees' termination. The Court notes that the Official Committee of Unsecured Creditors supports the Agreement.

C. The Court Approves the Assumption and Assignment of the Designated Contracts

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease.

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Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court “need engage in only a cursory review” of the debtor’s decision, and “should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.” *Id.*

Pursuant to §365(b)(1), if there has been a default in the executory contract to be assumed, the Debtor may not assume the contract unless the Debtor:

- a) cures, or provides adequate assurance that the [Debtor] will promptly cure, such default;
- b) compensates, or provides adequate assurance that the [Debtor] will promptly compensate, a party other than the debtor to such contract ..., for any actual pecuniary loss to such party resulting from such default; and
- c) provides adequate assurance of future performance under such contract or lease.

Counterparties to the Designated Contracts have not objected to the amounts that will be paid to cure any defaults under the assumed contracts and leases. As the assumption and assignment of the Designated Contracts constitute a material component of the Agreement, the Court finds that the Debtors have exercised their sound business judgment with respect to the assumption and assignment of these contracts.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

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CONT... Verity Health System of California, Inc.

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

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#41.00 HearingRE: [1636] Motion /Notice To Approve (I) Settlement and Asset Purchase Agreement by and Between Debtors Verity Medical Foundation and Verity Health Services Of California, Inc., Silicon Valley Medical Development, LLC and San Jose Medical Group, (II) Assumption and Assignment of Certain Contracts and Leases To Silicon Valley Medical Development, LLC, and (III) Rejection of Certain Leases; Declaration of Richard G. Adcock In Support Thereof

Docket 1636

Tentative Ruling:

3/18/2019

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

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve (I) Settlement and Asset Purchase Agreement By and Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc., Silicon Valley Medical Development, LLC and San Jose Medical Group, (II) Assumption and Assignment of Certain Contracts and Leases to Silicon Valley Medical Development, LLC, and (III) Rejection of Certain Leases [Doc. No. 1636] (the "Motion")
 - a) Submission of Signature Page of Declaration of Richard G. Adcock in Support of [Motion] [Doc. No. 1656]
 - b) Notice of Amended Exhibits to Settlement and Asset Purchase Agreement By and Between Debtors Verity Medication Foundation and Verity Health Services of California, Inc., Silicon Valley Medical Development, LLC and San Jose Medical Group [Doc. No. 1747]
- 2) Opposition papers:
 - a) Stanford's Reservation of Rights Re Proposed Assumption and Assignment of Sublease [Doc. No. 1699]
 - b) Limited Objection to [Motion] [filed by UnitedHealthcare Insurance Company] [Doc. No. 1742]
 - c) Limited Opposition of HealthNet, LLC to [Motion] [Doc. No. 1746]
 - d) Limited Objection and Reservation of Rights of Medical Office Buildings of

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California, LLC Regarding Debtors' [Motion] [Doc. No. 1749]
e) Objection of Cigna Entities' to [Motion] [Doc. No. 1778]
3) Omnibus Reply to Objections to [Motion] [Doc. No. 1829]
4) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 1745]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtor Verity Medical Foundation ("VMF") is a party to a professional services agreement (the "PSA") with San Jose Medical Group ("SJMG"). SJMG employs and contracts with physicians who provide medical services. Under the PSA, SMJG provides medical services to medical clinics operated by VMF (the "Clinics").

Debtors seek approval of a *Settlement and Asset Purchase Agreement* dated February 15, 2019 (the "Agreement"). The Agreement (1) provides for the termination of the PSA between VMF and SJMG, (2) provides for the sale of certain assets of the Clinics to Silicon Valley Medical Development, LLC ("Silicon Valley"), and (3) provides for the assignment to Silicon Valley of various contracts assumed by the Debtors (collectively, the "Designated Contracts"). [**Note 1**]

A. Objections of Health Net, LLC and UnitedHealthcare Insurance Company

The Debtors initially sought authorization to assume and assign certain managed care agreements (the "Managed Care Agreements") to Silicon Valley. UnitedHealthcare Insurance Company ("UnitedHealthcare") and Health Net, LLC ("HealthNet") are counterparties to the Managed Care Agreements. UnitedHealthcare and HealthNet filed limited objections to the assumption and assignment of the Managed Care Agreements, contending that the Debtors had not made a showing of adequate assurance of future performance.

The Debtors have reached a resolution of the objections asserted by UnitedHealthcare and HealthNet by agreeing not to assume and assign the Managed Care Agreements at this time. In addition, in furtherance of the agreement reached with UnitedHealthcare, throughout April 2009 the Debtors will continue to perform under the *Medical Group Participation Agreement* dated June 1, 2012 and the

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Medical Group/IPA Services Agreement (Professional Capitation) dated February 1, 2001.

B. Objection of Cigna

The Debtors are parties to certain provider agreements (the “Cigna Provider Agreements”) with Cigna Healthcare of California, Inc. and/or Cigna Health and Life Insurance Company (collectively, “Cigna”). The Debtors do not seek to assume and assign the Cigna Provider Agreements. Cigna asserts that any order approving the sale must provide Cigna at least sixty days to provide notice to Cigna’s members that the Clinics will be exiting the Cigna network.

The Debtors anticipate that Cigna’s objection will be resolved prior to the hearing. The Debtors state that they are not seeking to assume and assign the Cigna Provider Agreements at this time for the purpose of providing Cigna additional time to perform due diligence regarding Silicon Valleys’ ability to perform under the Cigna Provider Agreements. The Debtors state that they will continue to perform under the Cigna Provider Agreements while such due diligence is conducted.

C. Objection of the Landlord

VMF is a party to a *Triple Net Medical Office Building Lease* dated June 19, 2017 (the “Current Lease”) with Medical Office Buildings of California, LLC (the “Landlord”), pursuant to which VMF leases approximately 25,079 square feet of the first floor of a medical office building located in San Jose, CA (the “Premises”). VMF and the Landlord are also parties to a lease dated March 21, 1994 (the “Former Lease”). The term of the Former Lease expired on December 31, 2017, and VMF is currently occupying the second floor of the Premises as a holdover tenant.

The Landlord does not own the Premises. Instead, the Landlord leases the Premises from San Jose Healthcare System, LP (the “Ground Landlord”), pursuant to a lease dated July 1, 2000 (the “Ground Lease”). None of the Debtors is a party to the Ground Lease. The Ground Lease prohibits the Landlord from subleasing any portion of the premises to a “Precluded Transferee.”

Under the Motion, Debtors seek to assume and assign the Current Lease to Silicon Valley. The Landlord does not object to assignment of the Current Lease to Silicon Valley, but is concerned that Silicon Valley may be a Precluded Transferee under the Ground Lease. The Landlord has engaged in discussions with the Ground Lessor regarding the Debtors’ request to assume and assign the Current Lease.

The Landlord further asserts that the Former Lease cannot be assumed and

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assigned to Silicon Valley because it has expired. The Landlord states that it is not interested in negotiating a new lease for the portion of the Premises covered by the Former Lease.

Debtors assert that the Current Lease may be assumed and assigned to Silicon Valley because the Debtors are not bound by the terms of the Ground Lease. Further, Debtors argue that even if they were bound by the Ground Lease, the restrictions on assignment would be invalid under § 365(f)(1).

II. Findings and Conclusions

A. The Court Approves the Sale of the Clinics' Assets to Silicon Valley

The Court approves the private sale of the Clinics' assets to Silicon Valley, for the purchase price of \$1.27 million. Section 363(b) permits the debtor or trustee to sell estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Court finds that the sale provides optimal value to the estate. The sale will generate \$1.27 million of funds for the estate and will allow the Clinics to continue to serve patients.

Pursuant to § 363(f), the sale of the assets is free and clear of any and all liens, claims, and interests. Any secured creditors' liens will attach to the proceeds of the sale to the same extent, and with the same validity and priority, as those liens had prior to the sale. Holders of liens, claims, and interests have received notice of the Motion, and by failing to object are deemed to consent to the sale pursuant to § 363(f) (2).

B. The Court Approves the Settlement with SJMG

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay

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necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Applying the *A&C Properties* factors, the Court finds that the Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors. The Agreement eliminates disputes under the PSA between SJMG and the Debtors. The Debtors have asserted claims against SJMG for overpayments under the PSA, and SJMG has asserted claims against the Debtors for underpayments under the PSA and for negligence. Litigation of these claims would be complex, costly, and time consuming. The possibility that litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off. The Court notes that the Official Committee of Unsecured Creditors supports the Agreement.

C. The Court Approves the Assumption and Assignment of the Designated Contracts

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

Pursuant to §365(b)(1), if there has been a default in the executory contract to be assumed, the Debtor may not assume the contract unless the Debtor:

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- a) cures, or provides adequate assurance that the [Debtor] will promptly cure, such default;
- b) compensates, or provides adequate assurance that the [Debtor] will promptly compensate, a party other than the debtor to such contract ..., for any actual pecuniary loss to such party resulting from such default; and
- c) provides adequate assurance of future performance under such contract or lease.

Counterparties to the Designated Contracts have not objected to the amounts that will be paid to cure any defaults under the assumed contracts and leases. As the assumption and assignment of the Designated Contracts constitute a material component of the Agreement, the Court finds that the Debtors have exercised their sound business judgment with respect to the assumption and assignment of these contracts.

D. The Landlord's Objection to the Assumption and Assignment of the Current Lease is Overruled

The Court overrules the Landlord's objection to the assumption and assignment of the Current Lease. First, the anti-assignment provisions of the Ground Lease are not binding upon VMF, because VMF is not a party to the Ground Lease. Second, even if the Ground Lease was binding upon VMF, the anti-assignment provision would not be enforceable in bankruptcy. Section 365(f)(1) authorizes a debtor to assign an unexpired lease notwithstanding "a provision ... that prohibits, restricts, or conditions the assignment of such ... lease"

The Court notes that the Debtors do not seek to assume and assign the Former Lease, which has expired. With respect to the portion of the Premises covered by the Former Lease, the Debtors' designation of contracts to be assigned provides that either a new lease will be negotiated or that the Former Lease will be rejected.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

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

Note 1

To the extent that objections have been mooted by the Debtors' filing of an amended list of contracts and leases to be assumed and assigned, such objections are not discussed herein.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20013 David Russell Clough

Chapter 7

#100.00 Hearing
RE: [15] Motion to Convert Case From Chapter 7 to 13

fr. 12-4-18

Docket 15

***** VACATED *** REASON: CONTINUED 5-21-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

Trustee(s):

Heide Kurtz (TR)

Represented By
Robert A Hessling

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11:00 AM

2:18-20865 Worldwide Marketing Solutions

Chapter 7

#101.00 HearingRE: [22] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Motion of Timothy J. Yoo, Chapter 7 Trustee For Order: (1) Authorizing Sale of Estates Right, Title, and Interest In Personal Property; and (2) Approving Overbid Procedure; Memorandum of Points and Authorities; Declaration of Timothy J. Yoo In Support Thereof (with proof of service) (Smith, Lindsey)

Docket 22

Tentative Ruling:

3/18/2019

For the reasons set forth below, the Sale Motion is GRANTED to the extent set forth herein.

Key Sale Terms:

- 1) Proposed purchaser: Katie Williams
- 2) Property for Sale: The name "Williams Worldwide Television" and the URL <www.williamsworldwidetv.com>
- 3) Purchase price: \$6,000
- 4) Overbids: Minimum overbid is \$500 with all subsequent overbids to be in increments of \$500 (subject to adjustment by the Court to facilitate bidding)

Pleadings Filed and Reviewed:

- 1) Motion of Timothy J. Yoo, Chapter 7 Trustee for Order: (1) Authorizing Sale of Estate's Right, Title, and Interest in Personal Property; and (2) Approving Overbid Procedure [Doc. No. 22] (the "Sale Motion")
 - a) Notice of Sale of Estate Property [Doc. No. 24]
 - b) Notice of [Sale Motion] [Doc. No. 23]

I. Facts and Summary of Pleadings

Worldwide Marketing Solutions (the "Debtor") filed a voluntary Chapter 7 petition on September 17, 2018 (the "Petition Date"). The Chapter 7 Trustee (the

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CONT... Worldwide Marketing Solutions

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"Trustee") moves to sell the estate's interest in the name "Williams Worldwide Television" and the related URL <www.williamsworldwidetv.com> to Katie Williams. The purchase price is \$6,000, and the sale is subject to overbids. The Trustee does not seek a finding that the proposed purchaser is entitled to the protections of § 363(m).

No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The Trustee has a statutory obligation to liquidate the estate's assets; the sale furthers such obligation.

The Trustee is authorized to execute and deliver on behalf of the estate any and all documents necessary to implement the terms of the sale.

Notwithstanding Bankruptcy Rule 6004(f), the order approving the sale shall take effect immediately upon entry.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$5,000, with subsequent overbids to be increments of \$1,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Lindsey L Smith

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2:18-20993 Scarlet Tamazyan

Chapter 7

#1.00 Hearing
RE: [17] Motion to vacate dismissal

Docket 17

*** VACATED *** REASON: PER ORDER ENTERED 2-15-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scarlet Tamazyan

Represented By
Anita Khachikyan

Trustee(s):

Heide Kurtz (TR)

Pro Se

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10:00 AM

2:18-21646 Michael Andre Walker

Chapter 7

#2.00 Show Cause Hearing RE: [42] Notice to creditors (BNC-PDF) re Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments. 03/20/2019 at 10:00 a.m., (Lomeli, Lydia R.)

Docket 42

Tentative Ruling:

3/19/2019

The case is dismissed based on the Debtors' failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$155.

Pleadings Filed and Reviewed:

- 1) Order on Application to Pay Filing Fee in Installments [Doc. No. 10] (the "First Fee Installment Order")
- 2) Order (1) Vacating Dismissal and (2) Setting New Deadlines for Payment of Filing Fee Installment [Doc. No. 28] (the "Second Fee Installment Order")
- 3) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 41]
 - a) Notice of OSC [Doc. No. 42]

Michael Andrew Walker (the "Debtor") filed a voluntary Chapter 7 petition on October 3, 2018. On October 4, 2018, the Court entered an *Order on Application to Pay Filing Fee in Installments* [Doc. No. 10] (the "First Fee Installment Order"). On December 7, 2018, the Court dismissed the Debtor's case after the Debtor failed to make the payments required by the First Fee Installment Order. On December 10, 2018, the Court granted the Debtor's motion to vacate the dismissal and set new deadlines for payment of the remainder of the filing fee. *See* Order (1) Vacating Dismissal and (2) Setting New Deadlines for Payment of Filing Fee Installment [Doc. No. 28] (the "Second Fee Installment Order"). The Second Fee Installment Order required the Debtor to pay the remaining filing fee according to the following

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schedule:

- First installment payment: \$78.75 on or before December 21, 2018;
- Second installment payment: \$78.75 on or before January 11, 2019; and
- Third installment payment: \$78.75 on or before January 25, 2019.

See Second Fee Installment Order.

The Debtor has made payments in the total amount of \$180. Fees are delinquent in the amount of \$155.

On February 15, 2019, the Court issued an *Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments* [Doc. No. 41] (the "OSC"). The OSC ordered the Debtor to make the delinquent installment payments by no later than one week prior to the hearing. The Debtor have not made the delinquent payment and has not responded to the OSC.

Bankruptcy Rule 1017(b)(1) provides: "If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case."

The Debtor's case is dismissed based on the Debtor's failure to comply with the Second Fee Installment Order and the OSC. The Court will enter an order dismissing the case.

Party Information

Debtor(s):

Michael Andre Walker

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

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10:00 AM

2:18-23782 RAYMOND FELDMAN

Chapter 7

#3.00 Hearing
RE: [15] Motion to Avoid Lien with Bosco Credit LLC

fr. 2-20-19

Docket 15

Tentative Ruling:

3/19/2019

No appearance required. This is a continued hearing on the Debtor's *Motion to Avoid Lien Under 11 U.S.C. § 522(f)* [Doc. No. 15], pursuant to which the Debtor seeks to avoid Bosco Credit LLC's judicial lien. The Court has reviewed the Debtor's *Status Report Regarding Progress of Negotiations* [Doc. No. 26] and believes it is appropriate to continue this hearing to **April 24, 2019 at 10:00 a.m.** to allow additional time for the parties to attempt to resolve their dispute.

The Debtor is directed to file a further status report by no later than **April 17, 2019** to provide the Court with an update on the status of the parties' negotiations.

Party Information

Debtor(s):

RAYMOND FELDMAN

Represented By
Giovanni Orantes

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:19-11421 James Albert Phillips, IV

Chapter 7

#4.00 Status Hearing

RE: [1] Chapter 7 Involuntary Petition Against an Individual - Sonny) Additional attachment(s) added on 2/12/2019 (Milano, Sonny).

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-7-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Albert Phillips IV

Pro Se

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10:00 AM

2:19-10850 Laura Marie Sarkisian

Chapter 11

#5.00 HearingRE: [14] Motion to Dismiss Debtor Grand Pacific Financing Corporation's Motion to Dismiss Chapter 11 Bankruptcy Case With a Bar to Refiling; Memorandum of Points and Authorities in Support Thereof (w/Proof of Service) (Alper, Andrew)

Docket 14

Tentative Ruling:

3/19/2019

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

Pleadings Filed and Reviewed

1. Grand Pacific Financing Corporation's Motion to Dismiss Chapter 11 Bankruptcy Case With a Bar to Refiling [Doc. No. 14] (the "Motion to Dismiss")
2. Notice of Motion to Dismiss Chapter 11 Bankruptcy Case With a Bar to Refiling [Doc. No. 12]
3. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 16] (the "UST Motion to Dismiss")
4. As of the preparation of this tentative ruling, no opposition to the Motion to Dismiss is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Laura Marie Sarkisian (the "Debtor"), filed this voluntary chapter 11 case on January 28, 2019 (the "Petition Date"). As of the preparation of this tentative ruling, the Debtor has not filed any schedules, a statement of financial affairs ("SOFA"), or a certificate of credit counseling.

Creditor Grand Pacific Financing Corporation ("Movant") moves for an order dismissing this case with a 180-day bar to refiling pursuant to §§ 105(a), 109(h), 349(a), 521 and 1112(b)(1). Movant is the holder of a lien secured by the Debtor's residence. In support of dismissal, Movant contends that the Debtor filed this case in bad faith to thwart its foreclosure efforts. Movant states that on November 20, 2018,

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CONT... **Laura Marie Sarkisian**

Chapter 11

the Debtor's spouse, Kevork Sarkisian, filed a separate individual chapter 11 petition asserting an interest in Movant's collateral and that on January 3, 2019, that case was dismissed with a 180-day refiling bar. *See* Case. No. 2:18-bk-23587-BR. Movant requests that this Court take judicial notice of Mr. Sarkisian's petition, the U.S. Trustee's motion to dismiss that case, and the court's order granting the motion to dismiss and imposing a 180-day refiling bar. Shortly thereafter, the Debtor filed this case as a further attempt to take advantage of the automatic stay and delay the foreclosure.

Movant highlights that the Debtor failed to disclose Mr. Sarkisian's case in her petition and has otherwise failed to discharge her duties as a debtor-in-possession by failing to file schedules, a SOFA, and a certificate of credit counseling. Movant also highlights that the Debtor has had other cases dismissed in the past. *See In re Kevork Sarkisian and Laura Maria Sarkisian*, Case No. 2:11-bk-46275-PC; *In re Laura Marie Sarkisian*, Case No. 2:13-bk-13105-PC. **[Note 1]**

As of the preparation of this tentative ruling, no opposition is on file.

The Court also takes judicial notice of the U.S. Trustee's separately filed *Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* [Doc. No. 16] (the "UST Motion to Dismiss"), pursuant to which the U.S. Trustee seeks dismissal of this case with a 180-day refiling bar based upon the Debtor's failure to file case commencement documents, comply with U.S. Trustee reporting requirements, file monthly operating reports, and because the Debtor is a repeat filer. The U.S. Trustee scheduled a hearing on that motion for April 16, 2019.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(E) failure to comply with an order of the court;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any

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rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

Movant has established more than sufficient "cause" within the meaning of § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case. The Debtor has utterly disregarded her duties as a debtor-in-possession and not taken any steps to prosecute this case. Additionally, the absence of a response to this Motion to Dismiss, and the fact that the only activity the Debtor has undertaken in this case was to file the petition, lend credence to Movant's contention that this case was filed in bad faith solely to hinder Movant's foreclosure efforts.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The Debtor has not filed any schedules in this case, so there is nothing in the record for the Court to conclude that the Debtor has any assets that a trustee could administer for the benefit of creditors. Therefore, the Court finds that dismissal is in the best interest of creditors. Additionally, in view of the Debtor's and her husband's history of bankruptcy filings, the Court finds that the Debtor filed this case in bad faith to hinder and delay Movant's foreclosure efforts. Therefore, the Court finds cause exists to grant Movant's request for a 180-day refiling bar.

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III. Conclusion

For the reasons set forth above, the Motion to Dismiss is GRANTED.

Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1: The Court also takes judicial notice of the fact that Mr. Sarkisian also has a history of prior filings and dismissals, which include the two referenced above and *In re Kevork Sarkisian*, Case No. 2:12-bk-30011-PC.

Party Information

Debtor(s):

Laura Marie Sarkisian

Pro Se

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2:18-13712 Chong Sang Tak

Chapter 7

Adv#: 2:18-01217 Trujillo v. Tak et al

#6.00 HearingRE: [28] Motion and notice of motion for Default Judgment

Docket 28

Tentative Ruling:

3/19/2019

Tentative Ruling:

For the reasons set forth below, the Court finds that Defendant is liable under § 523(a)(6) for constructively discharging Plaintiff. The Court cannot assess Plaintiff's damages upon the present record. By no later than April 9, 2019, Plaintiff shall file and serve a declaration showing the damages she suffered as a result of the constructive discharge (as opposed to the assault).

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Default Judgment [Doc. No. 28]
- 2) Memorandum of Decision Imposing Case-Dispositive Sanctions Against Defendant [Doc. No. 23]
- 3) Order Imposing Case-Dispositive Sanctions Against Defendant [Doc. No. 24]

I. Facts and Summary of Pleadings

Celia Bryann Trujillo (the "Plaintiff") filed the instant *Complaint Objecting and Seeking Exception to Discharge of Debtor* [Doc. No. 1] (the "Complaint") on June 28, 2018. The Complaint alleges that Chong Sang Tak (the "Defendant") employed Plaintiff at his pizza restaurant; that Defendant failed to protect Plaintiff from another employee who sexually assaulted Plaintiff; and that Defendant's liability is excepted from discharge pursuant to § 523(a)(6).

The Complaint initially named Chong Sang Tak, In Og Tak, and Gangnam Pizza, Inc., dba Round Table Pizza ("Gangnam Pizza") as defendants. On July 30, 2018, Plaintiff filed a document captioned *Amended Adversary Petition* wherein Plaintiff requested that the Court dismiss Defendants In Og Tak, Gangnam Pizza, and Does 1 through 50 (the "Non-Answering Defendants"), on the ground that such defendants were named in error. The Court found that it was not appropriate to construe the

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CONT... **Chong Sang Tak**

Chapter 7

Amended Adversary Petition as a First Amended Complaint, since the document requested only that the Non-Answering Defendants be dismissed and did not re-allege any of the operative claims for relief. *See* Order Confirming Effectiveness of Plaintiff's Voluntary Dismissal of Non-Answering Defendants [Doc. No. 12] (the "Dismissal Order") at ¶ 3. Instead, the Court construed the *Amended Adversary Petition* as a request for dismissal of the Non-Answering Defendants, made pursuant to Civil Rule 41(a)(1)(A). Dismissal Order at ¶ 2. The Court confirmed the effectiveness of the dismissal of the Non-Answering Defendants. Dismissal Order at ¶ 3.

On February 4, 2019, the Court struck Defendant's Answer and entered Defendant's default. *See* Memorandum of Decision Imposing Case-Dispositive Sanctions Against Defendant [Doc. No. 23] and Order Imposing Case-Dispositive Sanctions Against Defendant [Doc. No. 24]. Plaintiff moves for entry of default judgment. No opposition to the Motion for Default Judgment is on file.

II. Findings and Conclusions

A. Facts Established by the Complaint

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). The following facts are established by the Complaint. [**Note 1**]

Commencing in June 2016, Plaintiff was employed by Defendant as a part-time server at his restaurant, Gangnam Pizza. After the restaurant had closed for the evening on January 6, 2017, Plaintiff's supervisor, Suk Ju Park, asked Plaintiff to come to the cash register. When Plaintiff arrived at the cash register, Suk grabbed Plaintiff around the waist and began fondling Plaintiff's breasts. Plaintiff ran into the restroom to escape the unwanted touching. Park chased Plaintiff into the restroom, where he continued to fondle Plaintiff's breasts. Plaintiff succeeded in escaping from the restaurant after being subjected to Suk's unwanted touching for approximately eight to ten minutes.

On January 7, 2017, Plaintiff advised Defendant, in writing, of the assault that had occurred the previous evening. On January 8, 2017, Defendant viewed closed circuit television footage of the assault. Defendant took no action against Park. Plaintiff never returned to work at Gangnam Pizza.

Defendant was aware that other female employees at Gangnam Pizza were subjected to unwanted sexualized touching by Park. Notwithstanding such awareness, Defendant took no action to protect Plaintiff or other female employees from Park.

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Wednesday, March 20, 2019

Hearing Room 1568

10:00 AM

CONT... **Chong Sang Tak**

Chapter 7

Shortly after Park assaulted Plaintiff, Defendant bought Park an airline ticket to enable him to return to South Korea. Defendant purchased the airline ticket to help Park avoid liability for the assault.

B. Plaintiff is Entitled to a Judgment of Non-Dischargeability

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under §523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

Plaintiff asserts that she is entitled to damages in the amount of \$250,000 as a result of Defendant's conduct. According to Plaintiff's declaration:

I had to undergo psycho analysis [sic] and therapy for the harassment and assault I underwent as an employee of [Defendant].... I could not work nor finish school and estimate my damages to be in the amount of \$250,000.00 for inability to work and severe emotional distress.

Plaintiff's Decl. at ¶ 5 [Doc. No. 28].

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CONT... **Chong Sang Tak**

Chapter 7

To substantiate the damages asserted, Plaintiff attaches an unauthenticated report from Clinica Sierra Vista. Plaintiff also seeks damages of \$300 on account of two weeks' unpaid wages.

Plaintiff does not articulate the legal rationale for her contention that Defendant is liable on account of Park's sexual assault. Even though it was Park, not Defendant, who committed the sexual assault, it is possible to postulate facts under which Defendant would be liable under § 523(a)(6). However, such facts are not present here. For Defendant to be liable under § 523(a)(6), it would be necessary for Plaintiff to show that Defendant knew that Park had a history of sexually assaulting female employees under his supervision, and that Defendant placed Park in a supervisory capacity because he wanted Plaintiff to be victimized by Park.

The Complaint does allege that Defendant was aware that other female employees at Gangnam Pizza were subjected to unwanted sexualized touching by Park. Critically, the Complaint does not specify whether Defendant was aware of Park's sexually abusive behavior before Park assaulted Plaintiff. Even if the Court were to assume that Defendant knew about Park's abusive tendencies before the assault, the Complaint falls short in a crucial respect. It does not allege facts sufficient to establish either that Defendant wanted Park to sexually assault Plaintiff, or that Defendant knew that it was substantially certain that the assault would occur.

Such facts would be necessary in order for the Court to find Defendant liable for the assault under § 523(a)(6). For example, the Complaint could have alleged facts showing that Defendant was a misogynist who deliberately employed sexual predators because he wanted to subject employees to sexual assault. There is nothing in the current record supporting such an inference. It is just as plausible that Defendant acted negligently or even recklessly in employing Park, but that Defendant did not employ Park for the purpose of inflicting sexual violence upon his other employees.

Although the Complaint does not establish that Defendant intended the sexual assault to occur, it does establish that Defendant is liable for a less serious offense. Specifically, the Complaint establishes that Defendant constructively discharged Plaintiff, and that he did so with the requisite intent to support liability under § 523(a)(6).

In California, an employee "discharged in violation of fundamental public policy may bring an action against their employer sounding in tort." *Gantt v. Sentry Insurance*, 1 Cal.4th 1083, 1098, 4 Cal.Rptr.2d 874, 824 P.2d 680 (Cal. 1992), *overruled in part on other grounds*, *Green v. Ralee Engineering Co.* 19 Cal.4th 66, 78 Cal.Rptr.2d 16, 960 P.2d 1046 (Cal. 1998). "[T]o establish a constructive discharge,

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CONT... **Chong Sang Tak**

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an employee must plead and prove ... that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." *Vasquez v. Franklin Mgmt. Real Estate Fund, Inc.*, 222 Cal. App. 4th 819, 826, 166 Cal. Rptr. 3d 242, 247 (Cal. Ct. App. 2013).

The Complaint establishes that Defendant viewed video of the sexual assault shortly after it occurred, and took no action against Park, the assailant. Defendant's inaction constituted a constructive discharge of Plaintiff, as that inaction created an intolerable working environment. Constructive discharge sounds in tort and therefore can give rise to liability under § 523(a)(6).

Defendant's constructive discharge of Plaintiff was willful and malicious within the meaning of § 523(a)(6). After watching video footage of the assault, Defendant took no action against Park and made no attempt to provide Plaintiff with a safe working environment. Defendant's failure to discharge his responsibilities as an employer in these circumstances establishes that Defendant had either a subjective intent to harm Plaintiff, or a subjective belief that harm to Plaintiff was substantially certain. Consequently, the injury inflicted by Defendant was willful.

The injury was also malicious. Defendant's failure to take remedial action after learning of the assault was a wrongful act done intentionally. That Defendant acted intentionally is shown by his subsequent actions to shield Park from liability by abetting his escape to South Korea. Defendant's actions necessarily caused injury and were done without just cause or excuse.

C. Plaintiff's Damages

For tortious conduct such as constructive discharge, "the measure of damages ... is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." Cal. Civ. Code § 3333. An employer may be held liable for emotional distress, mental anguish, and other psychic injuries that an employee suffers in connection with employer wrongdoing. "Such harm, though less susceptible of precise measurement than more tangible pecuniary losses or physical injuries would be, is no less real or worthy of compensation." *Agarwal v. Johnson*, 25 Cal. 3d 932, 953, 603 P.2d 58, 71 (Cal. 1979), *disapproved of on other grounds by White v. Ultramar, Inc.*, 21 Cal. 4th 563, 981 P.2d 944 (Cal. 1999).

In support of her claim for emotional distress damages of \$250,000, Plaintiff submits an unauthenticated report from Clinica Sierra Vista. Because the report has

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CONT... Chong Sang Tak

Chapter 7

not been authenticated by the psychotherapist who treated Plaintiff, it is inadmissible.

Plaintiff's declaration testimony is admissible to establish her emotional injuries.
Plaintiff testifies:

I had to undergo psycho analysis [sic] and therapy for the harassment and assault I underwent as an employee of [Defendant].... I could not work nor finish school and estimate my damages to be in the amount of \$250,000.00 for inability to work and severe emotional distress.

Plaintiff's Decl. at ¶ 5 [Doc. No. 28].

As discussed above, Plaintiff has not established Defendant's liability under § 523(a)(6) for the sexual assault. Plaintiff has shown that Defendant is liable for constructively discharging her. Plaintiff's declaration testimony focuses on the damages Plaintiff sustained from the sexual assault, as opposed to the damages resulting from the constructive discharge.

The Court cannot assess Plaintiff's damages upon the present record. By no later than **April 9, 2019**, Plaintiff shall submit further evidence showing the damages she suffered as a result of the constructive discharge. As of that date, the matter of Plaintiff's damages shall stand submitted. In the event a further hearing is required, the parties will be so notified.

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

Note 1

The Complaint attaches and incorporates by reference a *First Amended Complaint [for] Sexual Harassment and Hostile Work Environment in Violation of the Fair Employment and Housing Act; Sexual Harassment—Quid Pro Quo; Sex Discrimination and Hostile Work Environment in Violation of the Fair Employment*

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CONT... Chong Sang Tak

Chapter 7

and Housing Act; Gender Discrimination in Violation of the Fair Employment and Housing Act; Harassment Based on Gender; Failure to Take all Reasonable Steps Necessary to Prevent Discrimination and Harassment in Violation of Fair Employment and Housing Act; Negligence; Violations of Labor Code; Constructive Discharge; [and] Conversion filed in the Los Angeles Superior Court on November 15, 2017 (the "State Court Complaint"). Because the State Court Complaint is incorporated into the instant Complaint, the Court deems the facts alleged in the State Court Complaint to be established for purposes of determining Defendant's liability under § 523(a)(6).

Party Information

Debtor(s):

Chong Sang Tak	Pro Se
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Defendant(s):

Chong Sang Tak	Pro Se
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In Og Tak	Pro Se
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Gangnam Pizza, Inc.	Pro Se
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Does 1 Through 50, Inclusive	Pro Se
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Plaintiff(s):

Celia Bryann Trujillo	Represented By Christine Y Ham
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Trustee(s):

Sam S Leslie (TR)	Pro Se
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**United States Bankruptcy Court
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Wednesday, March 20, 2019

Hearing Room 1568

11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

#100.00 Hearing re [43] Objection to Claim #2 by Claimant Atlantic Wireless, Inc.. in the amount of \$ \$2,000,000.00

Docket 0

Tentative Ruling:

Tentative Ruling:

The Court has approved the stipulated continuance of this hearing to
April 17, 2019, at 11:00 a.m.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, March 20, 2019

Hearing Room 1568

11:00 AM

2:16-23349 Dantie Ray Miller

Chapter 7

#101.00 APPLICANT: Trustee - David M. Goodrich

Hearing re [24] and [25] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/19/2019

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

Total Fees: \$400

Total Expenses: \$31.24

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

Party Information

Debtor(s):

Dantie Ray Miller

Represented By
Marvin Jarrett Mann

Trustee(s):

David M Goodrich (TR)

Pro Se

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

Friday, March 22, 2019

Hearing Room 1568

2:00 PM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing

RE: [1770] Motion to Approve Compromise Under Rule 9019 Debtors' Notice and Motion to Approve (I) Settlement and Asset Purchase Agreement By and Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and Sports Orthopedic and Rehabilitation Associates and (II) Assumption and Assignment of Certain Lease: Declaration of Richard G. Adcock in Support Thereof

Docket 1770

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
3/15/19**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17889 Manuel J. Leon, Jr.

Chapter 7

Adv#: 2:18-01157 Gonzalez v. Leon Cruz

#1.00 JURY Trial Date Set

RE: [1] Adversary case 2:18-ap-01157. Complaint by Rosendo Gonzalez against Ramona Leon Cruz. (Charge To Estate). Complaint for Avoidance and Recovery of Fraudulent and Preferential Transfers Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Shinbrot, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 6-11-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Manuel J. Leon Jr.

Represented By
Gary Leibowitz
Jacqueline D Serrao

Defendant(s):

Ramona Leon Cruz

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Jeffrey S Shinbrot

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Rafatjoo, Hamid)

fr. 11-26-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 2-26-19**

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Renato Ferrer

Represented By
Joshua R Engle

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

**United States Bankruptcy Court
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9:00 AM

CONT... Felicidad Ferrer
Antony Thekkek

Represented By
Hamid R Rafatjoo

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Varand Gourjian

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr. 2-25-19

Docket 1

***** VACATED *** REASON: TRIAL CONTINUED 4-8-19 AND 4-10-19**

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:18-13712 Chong Sang Tak

Chapter 7

Adv#: 2:18-01217 Trujillo v. Tak et al

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01217. Complaint by Celia Bryann Trujillo against Chong Sang Tak , In Og Tak , Gangnam Pizza, Inc. , dba Round Table Pizza, Does 1 Through 50, Inclusive . willful and malicious injury)) (Milano, Sonny) Additional attachment(s) added on 6/28/2018 (Milano, Sonny). Additional attachment(s) added on 6/28/2018 (Milano, Sonny).

Docket 1

***** VACATED *** REASON: DEFAULT ENTERED 2-4-19**

Party Information

Debtor(s):

Chong Sang Tak Pro Se

Defendant(s):

Chong Sang Tak Pro Se

In Og Tak Pro Se

Gangnam Pizza, Inc. Pro Se

Does 1 Through 50, Inclusive Pro Se

Plaintiff(s):

Celia Bryann Trujillo Represented By
Christine Y Ham

Trustee(s):

Sam S Leslie (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-27-18; 11-26-18

Docket 1

***** VACATED *** REASON: PRETRIAL 6-11-19 AT 11:00 A.M.**

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 AM.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFEREN CE 4-9-19 AT 10:00 A.M.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01173 Official Committee of Unsecured Creditors of Garde v. BETA Healthcare

#9.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01173. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against BETA Healthcare Group. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: DISMISSED 12-6-18

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

BETA Healthcare Group

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Los Angeles
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#10.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#11.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-8-18

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#12.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#13.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-8-18

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#14.00 Trial Date Set
RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 5-14-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By Samuel R Maizel John A Moe
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Defendant(s):

American Red Cross of California	Pro Se
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Plaintiff(s):

Official Committee of Unsecured	Represented By Jeffrey I Golden
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#15.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 5-14-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01180 Official Committee of Unsecured Creditors of Garde v. L.A. Good Samaritan

#16.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01180. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against L.A. Good Samaritan Pathology Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-1-19**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

L.A. Good Samaritan Pathology

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#17.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 AM.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01182 Official Committee of Unsecured Creditors of Garde v. Cardioimage

#18.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01182. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Cardioimage Dynamics, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-1-19

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Cardioimage Dynamics, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#19.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#20.00 Trial Date Set
RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By Samuel R Maizel John A Moe
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Defendant(s):

Southwest Medical Resources, Inc.	Pro Se
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Plaintiff(s):

Official Committee of Unsecured	Represented By Jeffrey I Golden
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#21.00 Trial Date Set
RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By Samuel R Maizel John A Moe
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Defendant(s):

Carefusion Solutions, LLC	Pro Se
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Plaintiff(s):

Official Committee of Unsecured	Represented By Jeffrey I Golden
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#22.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-8-18

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#23.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#24.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#25.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#26.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#27.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#28.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. Nordian Healthcare

#29.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordian Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Nordian Healthcare Solutions, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#30.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 AM.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

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

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#31.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, March 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#32.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 4-16-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#1.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18; 1-28-19

Docket 10

Tentative Ruling:

3/27/2019

No appearances required. The tentative ruling is to take this matter off calendar. This is a continued hearing on Wells Fargo Bank, N.A.'s ("Movant") *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* [Doc. No. 10] (the "R/S Motion"). The chapter 7 Trustee, Jason M. Rund (the "Trustee") filed a timely opposition [Doc. No. 15]. This matter has been continued a number of times to afford the Trustee an opportunity to sell the real property that is the subject of the R/S Motion. To avoid unnecessary administrative costs of keeping this motion on calendar, the matter shall be taken off calendar. If the Trustee has not obtained approval of a sale of the subject property by August 31, 2019, Movant may re-notice a hearing on the R/S Motion.

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

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

9/20/2018

For the reasons stated below, the tentative ruling is to DENY the R/S Motion without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 10]
2. Trustee's Opposition to R/S Motion ("Trustee's Opposition") [Doc. No. 15]
3. As of the preparation of this tentative ruling, Movant has not filed a reply.

I. Facts and Summary of Pleadings

Motion

Rogelio and Carol Gonzalez (together, the "Debtors") filed this voluntary joint chapter 7 case on July 16, 2018. On August 30, 2018, creditor Wells Fargo Bank, N.A. ("Movant") filed a "Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 10] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property"). Movant asserts that cause exists to grant it relief from stay under § 362(d)(1) because the Debtors filed a Statement of Intention that indicates the Debtors' intent to surrender the Property ("Statement of Intention"). *See* Motion, Exhibit 8.

Movant also asserts that cause exists to grant it relief from stay under § 362(d)(2) because the Debtors have no equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case. In support, Movant states that the total debt on the Property is \$591,518.92 which is comprised of Movant's first priority deed of trust secured by a lien in the amount of \$248,386.30 and approximately fifteen other liens securing an approximate indebtedness of \$351,518.92. *See* Request for Judicial Notice, Doc No. 10, PDF p. 15. After factoring in 8% costs of sale (\$49,384.64), Movant contends that the total debt exceeds the Property's \$617,308 fair market value.

Opposition

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT...

Rogelio Gonzalez and Carol Gonzalez

Chapter 7

On September 10, 2018, the chapter 7 trustee filed an Opposition to the R/S Motion [Doc. No. 15] ("Trustee's Opposition"). The Trustee requests that the Court deny the R/S Motion as follows. First, the Trustee contends that Movant has not established sufficient cause for relief from stay under § 362(d)(1) because (i) Movant is adequately protected by an equity cushion of \$368,921.71 or 149%; and (ii) Debtors' Statement of Intention has no bearing on whether to grant Movant relief from stay because the Property is subject to administration by the Trustee pursuant to § 541.

Second, the Trustee contends that the Court should not grant Movant relief from stay pursuant to § 362(d)(2) because, using Movant's figures and assuming all the alleged liens are legitimate, the Debtors have approximately \$17,402.78 in equity in the Property. [NOTE 1] Additionally, the Trustee states that he is currently evaluating the validity of the other asserted liens on the Property and requests an opportunity to try to negotiate with those creditors for a consensual sale that might provide some benefit to the estate or pursue a sale free and clear of some or all those interests.

Reply

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based on Movant's figures, the Court finds that Movant is adequately protected by a 149% equity cushion.

The Court also finds that the Trustee has the better argument with respect to Debtors' Statement of Intention.

Based on the foregoing, the Court finds that Movant is not entitled to relief from stay under § 362(d)(1).

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... **Rogelio Gonzalez and Carol Gonzalez**

Chapter 7

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Since this is a chapter 7 case, it is undisputed that the Property is not necessary for an effective reorganization. Therefore, the Court must only determine whether the Debtors enjoy any equity in the Property. Using Movant's figures and deducting costs of sale, Debtors' \$100,000 homestead exemption, the Trustee's fees, and administrative claims, it appears unlikely that the Trustee will be able to administer the Property for the benefit of general unsecured creditors.

However, none of the purported junior lienholder filed a response to this R/S Motion. On balance, the Court is persuaded that it is premature to find that there is no equity in the Property given the relatively newness of this case and the lack of meaningful investigation by the Trustee into the validity of the junior liens.

III. Conclusion

The tentative ruling is to DENY the R/S Motion without prejudice.

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

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

NOTE 1: This figure represents the total equity in the Property prior to deducting any costs of sale or taking into consideration Debtors' \$100,000 homestead exemption.

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:19-10337 Christopher Steven Dooley and Kortney Ryan Dooley

Chapter 7

#2.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Forest River Travel Trailer .

Docket 12

Tentative Ruling:

3/27/2019

Tentative Ruling:

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

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

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

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

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

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... Christopher Steven Dooley and Kortney Ryan Dooley Chapter 7

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

Party Information

Debtor(s):

Christopher Steven Dooley

Represented By
Julie J Villalobos

Joint Debtor(s):

Kortney Ryan Dooley

Represented By
Julie J Villalobos

Trustee(s):

Sam S Leslie (TR)

Pro Se

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:19-10557 Nasreen Taylor

Chapter 7

#3.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA ACCORD, VIN: 1HGC R2F8 0GA1 22360 .

Docket 9

Tentative Ruling:

3/27/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... Nasreen Taylor

Chapter 7

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

Party Information

Debtor(s):

Nasreen Taylor

Represented By
Heather J Canning

Trustee(s):

Peter J Mastan (TR)

Pro Se

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:19-11284 Eric Lamonte Jasper

Chapter 7

#4.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Jeep Wrangler, VIN: 1C4BJWEG1HL532849 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

Tentative Ruling:

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

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

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

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

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

**United States Bankruptcy Court
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Los Angeles
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Monday, April 1, 2019

Hearing Room 1568

10:00 AM

CONT... Eric Lamonte Jasper

Chapter 7

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

Party Information

Debtor(s):

Eric Lamonte Jasper

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [1629] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Susan Chan Chow, et al. v. Ma Leyba, et al. (St. Vincent) BC648838 .

Docket 1629

***** VACATED *** REASON: CONTINUED 4-3-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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

Monday, April 1, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [1614] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM.

Docket 1614

***** VACATED *** REASON: CONTINUED 4-3-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#1.00 APPLICANT: Trustee: Jason M Rund

Hearing re [172] and [173] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/1/2019

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

Total Fees: \$86,404.37

Total Expenses: \$292.39

U.S. Bankruptcy Court: \$1,400

Paulina Kay: \$4,558.51 [*See Order Allowing Administrative Claim of Paulina Kay, Doc. No. 130*]

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

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

CONT... Christopher Kim Kay

Chapter 7

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#2.00 APPLICANT: Attorney for Trustee: Thomas H Casey, Esq.

Hearing re [172] and [173] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/1/2019

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

Fees: \$16,883.50

Expenses: \$1,607.31

The Court approves Applicant's interim fees awarded pursuant to Doc. No. 138 on a final basis.

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

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

CONT... Christopher Kim Kay

Chapter 7

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#3.00 APPLICANT: Accountant for Trustee: Hahn Fife & Company LLP

Hearing re [172] and [173] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/1/2019

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

Fees: \$10,488

Expenses: \$276.50

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

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Trustee(s):

Jason M Rund (TR)

Represented By

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

CONT...

Christopher Kim Kay

Thomas H Casey

Chapter 7

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#4.00 CHARGES: United States Bankruptcy Court

Hearing re [172] and [173] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/1/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#5.00 OTHER: Paulina Kay

Hearing re [172] and [173] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/1/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:19-12053 Pablo Andrade

Chapter 7

#6.00 Hearing
RE: [7] Motion to Dismiss Debtor

Docket 7

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pablo Andrade

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#7.00 Hearing
RE: [17] Motion For Entry of Order Dismissing Complaint or, In The Alternative,
Motion For Entry of Order Staying Trial of Adversary Proceeding, And
Memorandum of Points And Authorities In Support Thereof

Docket 13

***** VACATED *** REASON: CONTINUED 4-3-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By
Neal L Wolf

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#8.00 Hearing
RE: [20] Motion for Protective Order and Memorandum of Points and Authorities
in Support Thereof

Docket 20

***** VACATED *** REASON: CONTINUED 4-3-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By
Neal L Wolf
Anthony Dutra

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#9.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

fr: 3-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 4-3-19 AT 10:00 A.M.**

Tentative Ruling:

3/11/2019

Tentative Ruling:

Status Conference CONTINUED to **April 2, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on Defendant's Motion to Dismiss.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Sam J Alberts
Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#10.00 Hearing
RE: [154] second amended joint disclosure statement

fr.11-13-18
fr.3-19-19

Docket 129

***** VACATED *** REASON: CONTINUED 4-23-19 AT 10:00 A.M**

Tentative Ruling:

4/1/2019

Continued per stipulation and order.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#11.00 Hearing
RE: [157] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.
fr.3-19-19

Docket 157

***** VACATED *** REASON: CONTINUED 4-23-19 AT 10:00 A.M**

Tentative Ruling:

4/1/2019

Continued per stipulation and order.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#12.00 Hearing
RE: [161] second amended joint disclosure statement

FR. 11-13-18
fr.3-19-19

Docket 135

***** VACATED *** REASON: CONTINUED 4-23-19 AT 10:00 A.M.**

Tentative Ruling:

4/1/2019

Continued per stipulation and order.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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

Tuesday, April 2, 2019

Hearing Room 1568

10:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#13.00 Hearing
RE: [164] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.
fr.3-19-19

Docket 164

***** VACATED *** REASON: CONTINUED 4-23-19 AT 10:00 A.M.**

Tentative Ruling:

4/1/2019

Continued per stipulation and order.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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

Tuesday, April 2, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#100.00 Hearing
RE: [13] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion To Dismiss Complaint For (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims; Declaration of Paul Sangha (with Exhibit A) (with proof of service)

fr. 3-13-19

Docket 13

Tentative Ruling:

4/1/2019

Hearing VACATED. The Court has entered an order approving the stipulated dismissal of this action.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Represented By
David L. Neale

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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

Tuesday, April 2, 2019

Hearing Room 1568

11:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

Tuesday, April 2, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#101.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01386. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Paul Shangha. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

4/1/2019

Hearing VACATED. The Court has entered an order approving the stipulated dismissal of this action.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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

Tuesday, April 2, 2019

Hearing Room 1568

11:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:17-16425 Margarita Leon

Chapter 7

#1.00 APPLICANT: Howard M. Ehrenberg

Hearing re: [40] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2019

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

Total Fees: \$3,750

Total Expenses: \$51.11

International Sureties, Ltd: \$16.93

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

Party Information

Debtor(s):

Margarita Leon

Represented By
Michael J Hemming

Trustee(s):

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

CONT... **Margarita Leon**
Howard M Ehrenberg (TR)

Pro Se

Chapter 7

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:17-16425 Margarita Leon

Chapter 7

#2.00 Bond Payments - International Sureties

Hearing re: [40] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2019

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Margarita Leon

Represented By
Michael J Hemming

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:17-16425 Margarita Leon

Chapter 7

#3.00 APPLICANT: Accountant for Trustee Fees (Other Firm) - Menchaca & Company LLP

Hearing re: [40] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2019

On December 17, 2018, this Court entered an order approving the Trustee's request to employ Applicant as a tax preparer and to pay a \$1,000 flat fee [Doc. No. 37]. Those fees are approved on a final basis.

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

Party Information

Debtor(s):

Margarita Leon

Represented By
Michael J Hemming

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

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

#4.00 Status Conference

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

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18; 9-11-18; 12-11-18; 1-15-19; 2-20-19

Docket 1

Tentative Ruling:

4/2/2019

In connection with prior Status Conferences, the Court has stated that it would dismiss this action once all the conditions set forth in the *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") had been satisfied. Plaintiff Bradley D. Sharp, Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 for Liberty Asset Management Corporation (the "Plan Administrator"), states that all such conditions have been satisfied. The Plan Administrator states that he is in the process of preparing a stipulation and order for final dismissal.

By no later than **April 17, 2019**, the Plan Administrator shall submit a stipulation between the Plan Administrator and Crystal Waterfalls, LLC ("Crystal"), providing for the dismissal of this action, accompanied by a proposed order thereon. Crystal shall cooperate with the Plan Administrator to ensure that the stipulation is submitted promptly.

The Court will prepare and enter an appropriate order.

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

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

CONT... Crystal Waterfalls LLC

Chapter 11

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

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:18-17000 Keith Black Racing Engines, Inc.

Chapter 11

#5.00 Hearing re [59] Requiring Debtor To Appear And Show Cause Why This Case Should Not Be Dismissed .

Docket 0

Tentative Ruling:

4/2/2019

For the reasons set forth below, this case is DISMISSED.

Pleadings Filed and Reviewed

1. Order (1) Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed and (2) Vacating March 5th and 13th, 2019 Hearings and Suspending Briefing [Doc. No. 59] (the "OSC")
2. Debtor and Debtor-In-Possession's Response to Order (1) Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed and (2) Vacating March 5th and 13th, 2019 Hearings and Suspending Briefing [Doc. No. 64] (the "Debtor's Response")
3. Creditors Fast Machine, Inc.'s and Keith Black, Inc's Statement in Support of Dismissal re the Court's Order to Show Cause re Dismissal [Doc. No. 65] (the "KBI Parties' Response")

I. Facts and Summary of Pleadings

This is a hearing on the Court's *Order (1) Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed and (2) Vacating March 5th and 13th, 2019 Hearings and Suspending Briefing* [Doc. No. 59] (the "OSC"). The Court has reviewed the Debtor's Response [Doc. No. 64]. The Debtor disputes that this case was filed in bad faith but does not oppose dismissal and concedes that dismissal of this case is in the best interest of creditors, the estate and the Debtor due to a post-petition change in circumstances. The Court has also reviewed the KBI Parties' Response in which the KBI Parties support dismissal of this case [Doc. No. 65] [Note 1].

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

CONT... Keith Black Racing Engines, Inc.

Chapter 11

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" and "(B) gross mismanagement of the estate." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

The Debtor concedes that its operations are presently hampered due to its current inability to freely use its assets and because of unexpected delays in relocating its machinery. Debtor's Response, p. 6:26-27, 7:7-12. As a result, the Debtor states that it does not have an adequate source of cash flow or income to sustain a plan of reorganization. *Id.*, p. 9:5-6. Accordingly, the Court finds that "cause" exists within the meaning of § 1112(b)(4)(A) because that there is a substantial and continuing loss to or diminution to the estate and no reasonable likelihood of rehabilitation.

The Court also finds that "cause" exists under § 1112(b)(4)(B). The Debtor states that its intention for filing this bankruptcy case was to give it breathing room to restart its operations, but that it was unable to do so, in large part, because the KBI Parties began, post-petition, to claim ownership of the Debtor's intellectual property. However, if the Debtor's allegations are true, the Debtor provides no explanation as to why it failed to take any steps to stop the KBI Parties from engaging in such harmful conduct, such as seeking a temporary restraining order and/or damages for the KBI Parties' violation of the automatic stay. The Debtor also does not describe any other efforts it undertook to try to restart its business or otherwise reorganize its affairs. Therefore, the Court finds that the Debtor has grossly mismanaged this estate.

Having determined that cause exists under § 1112(b)(4), the Court must next determine whether to dismiss or convert this case or appoint a chapter 11 trustee. Based upon the Court's review of the Debtor's Schedules and Monthly Operating

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Keith Black Racing Engines, Inc.

Chapter 11

Reports, the Court finds that the Debtor does not appear to have any valuable assets that a trustee could administer for the benefit of creditors unless the trustee were to undertake the expensive and risky effort of litigating the Debtor's dispute with the KBI Parties. Furthermore, the Debtor and the KBI Parties submit that dismissal is in the best interest of creditors and the estate and no party in interest filed a response opposing dismissal. Therefore, the Court finds that dismissal of this case is in the best interest of creditors.

III. Conclusion

For the reasons set forth above, the case is DISMISSED.

After the hearing the Court will prepare separate orders dismissing this case and denying as moot the Debtor's (i) *Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing Debtor's Rejection of the Contract, as Executory* [Doc. No. 45], (ii) *Objection to Proof of Claim No. 8 Filed by Fast Machines, Inc.* [Doc. No. 48], and (iii) *Objection to Proof of Claim No. 9 Filed by Keith Black Inc.* [Doc. No. 51].

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

Note 1: The Debtor and the KBI Parties (defined in the OSC) both rehash their grievances with the other and argue in favor of their respective factual and legal positions. Because there are other grounds for the Court to determine that "cause" exists to dismiss this case under § 1112(b)(4), the Court declines to make any findings of fact or conclusions of law that might affect the claims asserted in the State Court Action.

Party Information

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CONT... Keith Black Racing Engines, Inc.

Chapter 11

Debtor(s):

Keith Black Racing Engines, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1803] Motion Seeking Nunc Pro Tunc (I) Approval Of Settlement Among Verity Health System Of California, Inc., Santa Clara County And Surgical Information Systems, LLC, And (Ii) Authorization Of Assumption And Assignment Of New Agreement To Santa Clara County And Assumption Of Remaining Portion By The Debtors

Docket 0

Tentative Ruling:

4/2/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice and Motion Seeking *Nunc Pro Tunc* (I) Approval of Settlement Among Verity Health System of California, Inc., Santa Clara County and Surgical Information Systems, LLC, and (II) Authorization of Assumption and Assignment of New Agreement to Santa Clara County and Assumption of Remaining Portion by Debtors [Doc. No. 1803] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion Seeking *Nunc Pro Tunc* (I) Approval of Settlement Among Verity Health System of California, Inc., Santa Clara County and Surgical Information Systems, LLC, and (II) Authorization of Assumption and Assignment of New Agreement to Santa Clara County and Assumption of Remaining Portion by Debtors [Doc. No. 1847]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On December 27, 2018, the Court approved the sale of Saint Louise Regional Medical Center ("St. Louise") and O'Connor Hospital ("O'Connor") to Santa Clara

**United States Bankruptcy Court
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Los Angeles
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Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

County ("SCC"). Doc. No. 1153 (the "SCC Sale Order"). The SCC Sale Order authorized the Debtors to assume and assign to SCC any of the Debtors' executory contracts and unexpired leases designated by SCC (the "Designated Contracts"). The sale closed on February 28, 2019.

Prior to the Petition Date, Surgical Information Systems, LLC ("SIS") entered into an agreement with the Debtors' predecessor, under which SIS licenses software used in the operation of St. Louise, O'Connor, and the Debtors' other hospitals (the "SIS Agreement"). The SIS Agreement was subsequently assigned to Debtor VHS. The SIS Agreement was not a Designated Contract. SCC has determined that it has a continuing need to use the SIS software. SIS asserts that absent its consent, the SIS Agreement is non-severable, and that the SIS Agreement does not permit VHS to host the SIS software for any hospitals that it no longer owns.

VHS, SCC, and SIS have reached a settlement agreement (the "Settlement Agreement") which provides for the bifurcation of the SIS Agreement. SCC will be permitted to continue to use the SIS software in the operation of St. Louise and O'Connor. The Debtors will continue to retain any and all rights under the SIS Agreement as it pertains to the remaining hospitals serviced thereunder (the "Modified Agreement"), and will gain the express right to assign the Modified Agreement to any other party without additional consideration or fees to SIS related to 2019. The Debtors have paid SIS \$877,590.13 as a cure claim and as adequate assurance of future performance. SCC has contributed \$350,000 to the payment.

The Debtors move for approval of the Settlement Agreement. The Official Committee of Unsecured Creditors (the "Committee") does not oppose the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

A. Notice and Service

There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of this hearing to interested parties. Because all parties entitled to notice under the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Doc. No. 132] received electronic notice of the hearing by means of the Court's Notice of Electronic Filing ("NEF") system, the Court will not require the Debtors to renotice the Motion. However, in the future, the Debtors should ensure that KCC provides notice of all matters set for hearing, and files proofs of service so indicating.

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CONT... Verity Health System of California, Inc.

Chapter 11

B. The Settlement Agreement is Approved

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors. The Settlement Agreement allows the Debtors to sever an agreement which SIS contends is non-severable and allows the Debtors to retain the benefits of the SIS software for the hospitals which the Debtors still own. In addition, the Settlement Agreement expressly provides that the Debtors have the ability to assign the licenses pertaining to the remaining hospitals. The Court notes that the Committee does not oppose the Settlement Agreement.

C. The Court Approves the Assumption and Assignment of the SIS Agreement

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

Pursuant to §365(b)(1), if there has been a default in the executory contract to be

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

assumed, the Debtor may not assume the contract unless the Debtor:

- a) cures, or provides adequate assurance that the [Debtor] will promptly cure, such default;
- b) compensates, or provides adequate assurance that the [Debtor] will promptly compensate, a party other than the debtor to such contract ..., for any actual pecuniary loss to such party resulting from such default; and
- c) provides adequate assurance of future performance under such contract or lease.

The Court approves the assumption and assignment of the SIS Agreement to SCC. Assumption and assignment is necessary to effectuate the sale of the St. Louise and O'Connor Hospitals to SCC, because SCC cannot operate the Hospitals without the SIS software.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

**United States Bankruptcy Court
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CONT...

Verity Health System of California, Inc.

Sam J Alberts
Shirley Cho
Patrick Maxcy

Chapter 11

**United States Bankruptcy Court
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Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 HearingRE: [1791] Application for Compensation Berkeley Research Group, LLC's First Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period August 31, 2018 Through December 31, 2018 for Berkeley Research Group LLC, Financial Advisor, Period: 8/31/2018 to 12/31/2018, Fee: \$3,717,941.00, Expenses: \$251,437.49.

Docket 1791

Tentative Ruling:

4/2/2019

N.B. There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of the hearing on this fee application to interested parties. Because all parties entitled to notice under the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Doc. No. 132] received electronic notice of the hearing by means of the Court's Notice of Electronic Filing ("NEF") system, the Court will not require the Debtors to renotice the fee application. However, in the future, the Debtors **must** ensure that KCC provides notice of all matters set for hearing, and files proofs of service so indicating.

Turning to the merits, on October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an

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Wednesday, April 3, 2019

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

interim fee application.

On November 7, 2018, the Court entered an order approving the Debtors' application to employ Berkeley Research Group, LLC ("BRG") as the Debtors' financial advisor. Pursuant to the procedures set forth in the Fee Procedures Order, BRG has submitted four Monthly Applications [Doc. Nos. 883, 1099, 1203, and 1392], none of which have been opposed.

No objections to *Berkeley Research Group, LLC's First Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period August 31, 2018 through December 31, 2018* [Doc. No. 1791] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$3,717,941.00

Expenses: \$251,437.49

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

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

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

CONT... Verity Health System of California, Inc.

Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
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Wednesday, April 3, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 HearingRE: [1792] Application for Compensation Pachulski Stang Ziehl & Jones LLP's First Interim Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period September 1, 2018 - December 31, 2018 for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 9/1/2018 to 12/31/2018, Fee: \$146252.70, Expenses: \$2,200.18.

Docket 1792

Tentative Ruling:

4/2/2019

N.B. There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of the hearing on this fee application to interested parties. Because all parties entitled to notice under the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Doc. No. 132] received electronic notice of the hearing by means of the Court's Notice of Electronic Filing ("NEF") system, the Court will not require the Debtors to renotice the fee application. However, in the future, the Debtors **must** ensure that KCC provides notice of all matters set for hearing, and files proofs of service so indicating.

Turning to the merits, on October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an

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interim fee application.

On November 14, 2018, the Court entered an order authorizing the Debtors to employ Pachulski Stang Ziehl & Jones LLP ("PSZJ") as conflicts counsel. Pursuant to the procedures set forth in the Fee Procedures Order, PSZJ has submitted three Monthly Applications [Doc. Nos. 868, 1113, and 1335], none of which have been opposed.

No objections to *Pachulski Stang Ziehl & Jones LLP's First Interim Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period September 1, 2018–December 31, 2018* [Doc. No. 1792] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$146,252.70

Expenses: \$2,200.18

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

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

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Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 3, 2019

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 HearingRE: [1799] Application for Compensation First Interim Application for Dentons US LLP, Debtor's Attorney, Period: 8/31/2018 to 12/31/2018, Fee: \$4119393.59, Expenses: \$97077.27. (Moe, John)

Docket 1799

Tentative Ruling:

4/2/2019

N.B. There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of the hearing on this fee application to interested parties. Because all parties entitled to notice under the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Doc. No. 132] received electronic notice of the hearing by means of the Court's Notice of Electronic Filing ("NEF") system, the Court will not require the Debtors to renotice the fee application. However, in the future, the Debtors **must** ensure that KCC provides notice of all matters set for hearing, and files proofs of service so indicating.

Turning to the merits, on October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On September 28, 2018, the Court entered an order approving the Debtors'

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application to employ Dentons US LLP ("Dentons") as its general bankruptcy counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Dentons has submitted four Monthly Applications [Doc. Nos. 853, 1001, 1178, and 1443], none of which have been opposed.

Dentons has stipulated with the United States Trustee to reduce its request for fees by \$4,480 and to reduce its request for expenses by \$5,539.55. No objections to the *First Interim Application of Dentons US LLP, as Debtors' Counsel, for Fees and Expense Reimbursement for the Period August 31, 2018 through December 31, 2018* [Doc. No. 1799] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$4,114,913.59

Expenses: \$91,537.71

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

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

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Los Angeles
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Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 HearingRE: [1795] Application for Compensation First Interim Application of Milbank LLP for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for Milbank LLP, Creditor Comm. Atty, Period: 9/14/2018 to 12/31/2018, Fee: \$2,247,099.99, Expenses: \$36,811.82.

Docket 1795

Tentative Ruling:

4/2/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). [Note 1] Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. [Note 2] The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 6, 2018, the Court entered an order authorizing the Official Committee of Unsecured Creditors (the "Committee") to retain Milbank LLP ("Milbank") as its counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Milbank has submitted four Monthly Applications [Doc. Nos. 871, 872, 1177, and 1420], none of which have been opposed.

No objections to the *First Interim Application of Milbank LLP for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* [Doc. No. 1795] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth

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below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$2,247,099.99

Expenses: \$36,811.82

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

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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#11.00 HearingRE: [1796] Application for Compensation First Interim Application of FTI Consulting, Inc. for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for FTI Consulting, Inc., Financial Advisor, Period: 9/14/2018 to 12/31/2018, Fee: \$1,084,689.75, Expenses: \$14,553.04.

Docket 1796

Tentative Ruling:

4/2/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). [Note 1] Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. [Note 2] The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 14, 2018, the Court entered an order authorizing the Official Committee of Unsecured Creditors (the "Committee") to retain FTI Consulting, Inc. ("FTI") as its financial advisor. Pursuant to the procedures set forth in the Fee Procedures Order, FTI has submitted four Monthly Applications [Doc. Nos. 869, 870, 1176, and 1419], none of which have been opposed.

No objections to the *First Interim Application of FTI Consulting, Inc. for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* [Doc. No. 1796] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and

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expenses set forth below, which may be paid (to the extent not previously paid)
subject to available cash on hand in the estate:

Fees: \$1,084,689.75

Expenses: \$14,553.04

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

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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#12.00 HearingRE: [1729] Motion to Reject Lease or Executory Contract Debtors' Notice and Motion for Order Authorizing (I) Rejection of Lease of Real Property and Executory Contract for Personal Property and (II) Abandonment of Personal Property; Memorandum of Points and Authorities and Declaration of Richard G. Adcock in Support Thereof

Docket 1729

Tentative Ruling:

4/2/2019

Debtors shall appear to address whether the Landlord and Readisuite received actual notice of the Motion. Provided that the Landlord and Readisuite did receive notice, the Court is prepared to grant the Motion.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice and Motion for Order Authorizing (I) Rejection of Lease of Real Property and Executory Contract for Personal Property and (II) Abandonment of Personal Property [Doc. No. 1729] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion for Order Authorizing (I) Rejection of Lease of Real Property and Executory Contract for Personal Property and (II) Abandonment of Personal Property [Doc. No. 1848]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors seek authorization to reject a lease (the "Lease") between Debtor VMF, as tenant, and SFI 901 Campus Dr, LLC, as landlord (the "Landlord"), pertaining to property located at 901 Campus Drive, Daley City, CA (the "Leased Premises"). VMF operates a primary care clinic at the Leased Premises (the "Clinic"). Kris Kealey, M.D., is the only physician employed to work at the Clinic. Dr. Kealey is employed by

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Chapter 11

non-debtor Verity Medical Group, PC ("VMG"). Dr. Kealey and VMG have entered into a separation agreement, effective as of March 7, 2019.

The Landlord will enter into a new lease, effective as of March 8, 2019, with a party unrelated to the Debtors, and Dr. Kealey will continue to provide services at the Leased Premises.

The Debtors and the Landlord have agreed that upon rejection of the lease, the Landlord will be entitled to retain the security deposit, in the amount of \$7,959.25, in full satisfaction of the Landlord's claims arising from rejection of the Lease.

Phone and data services to the Leased Premises are provided by Readisuite. The Debtors seek authorization to reject the contract with Readisuite (the "Readisuite Contract") because the new tenant does not intend to use Readisuite as its phone and data services provider. The Debtors and Readisuite have agreed that Readisuite will be entitled to retain a security deposit in the amount of \$1,700 in full satisfaction of Readisuite's claims arising from rejection of the Readisuite Contract.

The Debtors seek authorization to abandon personal property located at the Leased Premises, on the ground that the costs of removing, storing, and marketing the personal property would outweigh any benefit to the estates.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

A. Notice and Service

There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of this hearing to interested parties. The Court is prepared to grant the Motion provided that the Debtors can establish that the Landlord and Readisuite received notice.

B. The Court is Prepared to Grant the Motion Provided the Debtors Establish that Notice was Sufficient

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated

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that the Court “need engage in only a cursory review” of the debtor’s decision, and “should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.” *Id.*

The Debtors have shown that rejection of the Lease and the Readisuite Contract is in the best interests of the estates. The Debtors ceased operating the Clinic on March 7, 2019. The Debtors have no need of the Leased Premises or the services provided under the Readisuite Contract. Rejection of the Lease and the Readisuite Contract will reduce administrative expenses.

Section 554(a) authorizes the Debtors to abandon property of inconsequential value after notice and a hearing. The Debtors have established that the costs of removing, storing, and marketing the personal property located at the Leased Premises would outweigh any benefit to the estates. The Debtors are authorized to abandon the personal property.

III. Conclusion

The Court is prepared to grant the Motion provided the Debtors can establish that the Landlord and Readisuite received notice.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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#13.00 HearingRE: [1800] Application for Compensation First Interim Application for Nelson Hardiman LLP, Special Counsel, Period: 8/31/2018 to 12/31/2018, Fee: \$387,973.50, Expenses: \$380.15. (Shirley, Rosa)

Docket 1800

Tentative Ruling:

4/2/2019

N.B. There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of the hearing on this fee application to interested parties. Because all parties entitled to notice under the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Doc. No. 132] received electronic notice of the hearing by means of the Court's Notice of Electronic Filing ("NEF") system, the Court will not require the Debtors to renotice the fee application. However, in the future, the Debtors **must** ensure that KCC provides notice of all matters set for hearing, and files proofs of service so indicating. **[Note 1]**

Turning to the merits, on October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 2]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 3]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On October 30, 2018, the Court entered an order authorizing the Debtors to

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employ Nelson Hardiman LLP ("Nelson Hardiman") as special healthcare regulatory counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Nelson Hardiman has submitted four Monthly Applications [Doc. Nos. 828, 879, 1131, and 1341], none of which have been opposed.

No objections to *Nelson Hardiman, LLP's First Quarterly Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period August 31, 2018 through December 31, 2018* [Doc. No. 1800] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$387,973.50

Expenses: \$380.15

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

Note 1

In addition, the initial notice of the hearing prepared by the Debtors did not state that Nelson Hardiman, LLP ("Nelson Hardiman") would be seeking interim compensation. On March 15, 2019, the Debtors filed a supplemental notice setting forth Nelson Hardiman's fee request. The supplemental notice did not provide parties the required 21 days' notice of the hearing. However, Nelson Hardiman timely provided separate notice of its fee application to interested parties. Therefore, the Court finds that notice was sufficient.

Note 2

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications.

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The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 3

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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Chapter 11

#14.00 Hearing
RE: [1629] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Susan Chan Chow, et al. v. Ma Leyba, et al. (St. Vincent) BC648838 .

FR. 4-1-19

Docket 1629

Tentative Ruling:

4/2/2019

For the reasons set forth below, the Motions are GRANTED; however, the order granting the Motions shall not take effect until **July 19, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [as to Debtor Verity Health System, Inc.] [Doc. No. 1614]
- 2) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [as to Debtor St. Vincent Medical Center] [Doc. No. 1629]
- 3) Official Committee of Unsecured Creditors' Response to Motions for Relief from Stay (Non-Bankruptcy Forum) Filed by Susan Chan Chow and Lindsey Chow [Doc. No. 1834]
- 4) Debtors' Response to Motion for Relief from the Automatic Stay Filed by Susan Chan Chow and Lindsey Chow [Doc. No. 1835]
- 5) Answer to Debtor's Response to Our Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 and § 523(a)(6) and § 523(a)(4) [Doc. No. 1900]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11

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cases. Doc. No. 17.

Susan Chan Chow and Lindsey Chow (“Movants”), proceeding *in pro se*, seek stay-relief, pursuant to § 362(d)(1), for the purpose of continuing to litigate an action for wrongful death, medical malpractice, and negligent infliction of emotional distress against Debtors St. Vincent Medical Center (“St. Vincent”) and Verity Health System, Inc. (“VHS”) (collectively, the “Debtors”) in the Los Angeles Superior Court (the “State Court Action”). The State Court Action was filed on January 31, 2017. Prior to the Petition Date, St. Vincent and VHS filed Demurrers and Motions to Strike; as a result, Movants have been required to file First, Second, Third, and Fourth Amended Complaints. A hearing on a Demurrer and Motion to Strike filed by St. Vincent and VHS with respect to the Fourth Amended Complaint was set for September 12, 2018, but was taken off calendar as a result of the bankruptcy filing.

In support of the Motions, Movants allege, *inter alia*, that the Debtors euthanized Henry Chow (the father of Movant Lindsey Chow and the spouse of Movant Susan Chow) as a cost-saving measure.

Debtors dispute Movants’ allegations with respect to Mr. Chow’s death. Debtors oppose stay-relief at this time, explaining that they would be required to spend significant time defending against the State Court Action if the stay were lifted. Debtors request that the stay remain in place until October 15, 2019, so that the Debtors can focus upon selling their remaining hospitals.

For the same reasons, the Official Committee of Unsecured Creditors (the “Committee”) asserts that the Motion should be denied without prejudice.

In their Reply in support of the Motions, Movants request that the Bankruptcy Court conduct a jury trial of the claims asserted in the State Court Action in June or July. Movants assert that Mr. Chow died under suspicious circumstances and that a speedy trial is necessary to protect the public.

II. Findings and Conclusions

The Court declines to conduct a jury trial of the claims asserted in the State Court Action. The State Court is the forum best suited to adjudicate Movants’ claims, which all arise under non-bankruptcy law. Further, the State Court is already intimately acquainted with this matter, having ruled upon multiple Demurrers and Motions to Strike filed by the Debtors.

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes ‘cause’ for granting relief from the automatic stay is decided on a

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case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court

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held that “[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit.” *Id.*

Because Movants have not agreed to limit recovery to insurance, granting stay-relief at this time would require the Debtors to defend against the State Court Action. Although it would certainly be possible for the Debtors to mount a defense at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors’ professionals from other pressing matters. While it is true that primary responsibility for the Debtors’ defense could be assigned to special litigation counsel, the Debtors’ general bankruptcy counsel would still be required to monitor the litigation.

An auction of four of the Debtors’ hospitals is set to occur on April 8–9, with a hearing to approve the results of the auction set for April 17, 2019. To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the auction and the subsequent hearing to approve the results of the auction. Granting stay-relief at this juncture would require the Debtors to divert their attention from issues pertaining to the sale, which would be detrimental to creditors. Even after the auction has been completed, Debtors will be required to devote substantial attention to issues arising in connection with the California Attorney General’s review of the sale.

In view of the findings set forth above, *Curtis* factors two, five, seven, and eleven weigh against granting stay-relief at this time. Although the relevant *Curtis* factors do not warrant stay-relief now, stay-relief will be warranted as of **July 19, 2019**.

Granting stay-relief now would interfere with the bankruptcy case by distracting the Debtors’ professionals from other pressing matters (the second *Curtis* factor). With respect to factor five, the damages sought in the State Court Action are substantial; Movants have not agreed to limit recovery to applicable insurance; and it is therefore not known whether available insurance proceeds will be sufficient to cover any judgment Movants may obtain. Factor five therefore weighs against granting immediate stay-relief. The litigation’s interference with the case has the potential to reduce creditor recoveries; therefore, factor seven weighs against granting immediate stay-relief. The State Court Action has not reached the trial stage, so factor eleven also weighs against granting immediate stay-relief.

Factor twelve—the balance of the hurt—weighs in favor of the Debtors. As discussed, granting immediate stay-relief will harm the Debtors by distracting the Debtors’ professionals from other pressing matters. On the other hand, the Court acknowledges that Movants will suffer some prejudice as a result of further delay.

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However, in assessing the prejudice to Movants, the Court notes that Movants have not yet succeeded in putting the claims in the State Court Action at issue, even though the action was filed approximately eighteen months before the Petition Date. Given this fact, the prejudice to the Debtors from granting the Motion now outweighs the prejudice to Movants resulting from some additional delay.

To the extent that they apply, the remaining *Curtis* factors weigh in favor of immediate stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is a the tribunal best suited to hear the Movant's claims (factor three); and lifting the stay would result in a more expeditious determination of the State Court Action (factor ten). Nonetheless, these factors are outweighed by the harm that immediate stay-relief would impose upon the Debtors.

Having considered the applicable *Curtis* factors, the Court finds that Movants are entitled to stay-relief, effective as of **July 19, 2019**. This result gives the Debtors some breathing space to achieve their objectives, while at the same time delaying Movants' ability to proceed with the State Court Action only briefly.

III. Conclusion

Based upon the foregoing, the Motions are GRANTED; however, the order granting the Motion shall not take effect until **July 19, 2019**. Debtors shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II

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Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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#15.00 Hearing
RE: [1614] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM.

FR. 4-1-19

Docket 1614

Tentative Ruling:

4/2/2019

See Cal. No. 14, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

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Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#16.00 Hearing
RE: [20] Motion for Protective Order and Memorandum of Points and Authorities
in Support Thereof

fr. 4-2-19

Docket 20

Tentative Ruling:

4/2/2019

For the reasons set forth below, the Court will stay this action pending the completion of arbitration. Because the arbitration clause provides that disclosure and discovery shall be conducted in accordance with the provisions of the California Code of Civil Procedure, LA Care's motion for a protective order excusing compliance with its discovery obligations under the Federal Rules of Civil Procedure is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief [Doc. No. 1] (the "Complaint")
- 2) Papers filed in connection with L.A. Care's Motion to Dismiss:
 - a) Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding, and Memorandum of Points and Authorities in Support Thereof [Doc. No. 17] (the "Motion")
 - i) Notice of [Motion] [Doc. No. 14]
 - b) Plaintiffs' Amended Opposition to Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding [Doc. No. 32]
 - c) Reply Brief in Support of Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary

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- Proceeding [Doc. No. 36]
- 3) Papers filed in connection with LA Care's Motion for Protective Order:
 - a) Motion for Entry of Protective Order, and Memorandum of Points and Authorities in Support Thereof [Doc. No. 20]
 - b) Plaintiffs' Opposition to Motion for Entry of Protective Order [Doc. No. 26]
 - c) Reply Brief in Support of Motion for Entry of Protective Order [Doc. No. 35]
 - 4) Papers filed in connection with Status Conference:
 - a) Joint Status Report [Doc. No. 18]
 - b) Memorandum of Points and Authorities Regarding Non-Core Designation [filed by LA Care] [Doc. No. 19]
 - c) Plaintiffs' Response to Defendant's Memorandum of Points and Authorities Regarding Non-Core Designation [Doc. No. 22]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On January 3, 2019, Debtors St. Vincent Medical Center ("St. Vincent") and St. Francis Medical Center ("St. Francis," and together with St. Vincent, the "Plaintiffs") filed a *Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief* [Doc. No. 1] (the "Complaint") against Local Initiative Health Authority for Los Angeles County, d/b/a L.A. Care Health Plan ("L.A. Care").

A. Summary of the Complaint

The allegations of the Complaint may be summarized as follows:

1. Allegations Pertaining to St. Vincent

L.A. Care is an independent local public agency that provides health services to its members under contractual arrangements with hospitals, physicians, and other healthcare providers. Complaint at ¶ 7.

On July 1, 1998, St. Vincent and L.A. Care entered into a *Hospital Per Diem*

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Services Agreement (the "St. Vincent/L.A. Care Agreement"), under which L.A. Care agreed to compensate St. Vincent for covered medical services rendered by it to L.A. Care's members at agreed upon rates. Complaint at ¶ 13. Under the St. Vincent/L.A. Care Agreement, St. Vincent was required to submit claims for payment (the "St. Vincent Fee for Service Claims") to L.A. Care within six months of the date of service for L.A. Care members, and L.A. Care was required to make payments to St. Vincent within thirty days of receipt of the St. Vincent Fee for Service Claims at rates agreed to between the parties. *Id.* at ¶ 14.

Between November 2, 2017 and December 3, 2018, St. Vincent timely submitted no fewer than 606 St. Vincent Fee for Service Claims to L.A. Care. *Id.* at ¶ 15. L.A. Care has systematically and materially breached the St. Vincent/L.A. Care Agreement by failing and refusing to pay St. Vincent for the services St. Vincent rendered to L.A. Care's members, or by paying St. Vincent amounts less than those owed pursuant to the terms of the St. Vincent/L.A. Care Agreement. *Id.* at ¶ 16. By reason of L.A. Care's breach, St. Vincent has been damaged in the sum of not less than \$4,320,335.32, of which \$1,895,994.64 constitutes systematic underpayments, plus interest. *Id.* at ¶ 19.

L.A. Care had actual notice of St. Vincent's bankruptcy filing. *Id.* at ¶ 33. Notwithstanding its knowledge of the bankruptcy filing, L.A. Care made deductions from capitation payments owed to St. Vincent, in an amount of not less than \$89,589.64 (the "St. Vincent Setoffs"). *Id.* at ¶ 34. The St. Vincent Setoffs were not authorized by St. Vincent and L.A. Care did not obtain approval from the Court prior to effectuating the St. Vincent Setoffs. *Id.* at ¶ 37.

2. Allegations Pertaining to St. Francis

On March 31, 2003, St. Francis and L.A. Care entered into a *Hospital Services Agreement* (the "St. Francis/L.A. Care Agreement"), under which L.A. Care agreed to compensate St. Francis for covered medical services rendered by it to L.A. Care's members at agreed upon rates. *Id.* at ¶ 40. Under the St. Francis/L.A. Care Agreement, St. Francis was required to submit claims for payment (the "St. Francis Fee for Services Claims") to L.A. Care within six months of the date of service for L.A. Care members, and L.A. Care was required to make payments to St. Francis within thirty days of receipt of the St. Francis Fee for Services Claims at the rates agreed to between the parties. *Id.* at ¶ 41.

Between November 2, 2017 and December 3, 2018, St. Francis submitted no fewer than 2,134 St. Francis Fee for Service Claims to L.A. Care. *Id.* at ¶ 42. LA Care

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has systematically and materially breached the St. Francis/L.A. Care Agreement by failing and refusing to pay St. Francis for the services St. Francis rendered to L.A. Care's members, or by paying St. Francis amounts less than those owed pursuant to the terms of the St. Francis/L.A. Care Agreement. *Id.* at ¶ 43. By reason of L.A. Care's breach, St. Francis has been damaged in the sum of not less than \$21,054,689.63, of which \$12,502,651.97 constitutes systematic underpayments, plus interest. *Id.* at ¶ 46.

L.A. Care had actual knowledge of St. Francis' bankruptcy filing. *Id.* at ¶ 60. Notwithstanding its knowledge of the bankruptcy filing, L.A. Care made deductions from capitation payments owed to St. Francis, in an amount of not less than \$269,570.43 (the "St. Francis Setoffs"). The St. Francis Setoffs were not authorized by St. Francis and L.A. Care did not obtain approval from the Court prior to effectuating the St. Francis Setoffs. *Id.* at ¶ 61.

3. Claims for Relief

Based upon the foregoing allegations, Plaintiffs assert claims for breach of contract (first and fifth claims), turnover pursuant to § 542(b) (second and sixth claims), unjust enrichment (third and seventh claims), damages for violation of the automatic stay for the St. Vincent and St. Francis Setoffs (fourth and eighth claims), and an order enjoining L.A. Care from engaging in any further setoffs (ninth claim).

B. Summary of LA Care's Motion to Dismiss, or, in the Alternative, Stay Trial and Motion for a Protective Order

L.A. Care moves to dismiss the Complaint, for failure to state a claim upon which relief can be granted pursuant to Civil Rule 12(b)(6). In the alternative, L.A. Care asserts that Plaintiffs' claims are subject to mandatory arbitration, and moves for an order staying trial until such arbitration has been conducted. L.A. Care moves for a protective order staying discovery, based on the fact that the arbitration clauses in the underlying contracts provide that discovery shall be conducted in accordance with the California Code of Civil Procedure, rather than the Federal Rules of Civil Procedure. L.A. Care makes the following arguments in support of the Motions:

Plaintiffs' Claims Must be Dismissed Because they are Subject to Mandatory Arbitration; in the Alternative, the Action Must be Stayed Until Arbitration Has Been Completed

Both the St. Vincent/L.A. Care Agreement and the St. Francis/L.A. Care

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Agreement provide that "all claims and controversies arising out of or in connection with this Agreement shall be subject to binding arbitration" St. Vincent/L.A. Care Agreement at ¶ 2.6; St. Francis/L.A. Care Agreement at ¶ 3.6. The Court does not have discretion to decline to enforce the arbitration clause because this action is not a core proceeding. *See Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) ("In non-core proceedings, the bankruptcy court generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement").

Plaintiffs' claims for breach of contract are clearly non-core, as these claims do not depend upon the Bankruptcy Code for their existence. Plaintiffs' turnover claim under Bankruptcy Code § 542 is also non-core, because Plaintiffs have attempted to manufacture core jurisdiction by repackaging what is in reality a state-law-based breach of contract claim into a purported turnover claim. In *MCI Telecommunications Corp. v. Gurga (In re Gurga)*, the Ninth Circuit Bankruptcy Appellate Panel rejected a similar attempt to cast what was in reality a non-core breach of contract claim as a core turnover claim:

Despite Source's attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by Source entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes claims for relief for only one potential core issue—turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. Here, the amounts, if any, owed to Source by MCI are in dispute and this dispute rests on breach of contract issues. In fact, Source made a prepetition demand for arbitration of the dispute, described at that time as breach of contract and accounting causes of action. Breach of contract actions are noncore claims. *See* 28 U.S.C. § 157.

MCI Telecommunications Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (internal citations omitted).

The amounts that L.A. Care allegedly failed to pay Plaintiffs are all disputed amounts that Plaintiffs can claim as damages for L.A. Care's purported breach of contract. Plaintiffs cannot rely upon the turnover provision with respect to these amounts. "It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute."

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United States v. Inslaw, Inc., 932 F.2d 1467, 1472 (D.C. Cir. 1991). Turnover claims can be core proceedings only if their "purpose is the collection rather than the creation, recognition, or liquidation of a matured debt.... When a bona fide dispute exists as to liability involving state law, then the proceeding cannot be core under § 157(b)(2)(E)." *Acolyte Elect. Corp. v. City of New York*, 69 B.R. 155, 172 (Bankr. E.D.N.Y. 1986).

The Court should dismiss the non-core claims that are subject to mandatory arbitration. *See Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004) ("Nor did the district court err in dismissing the plaintiffs' claims that were subject to arbitration pursuant to Fed.R.Civ.P. 12(b)(6)"). In the alternative, the Court should stay the proceeding until the parties have engaged in arbitration.

The Complaint Fails to State a Claim Because Plaintiffs Did Not Allege Compliance with the Government Claims Act

L.A. Care is an independent local public agency established to provide health coverage to low-income residents of Los Angeles County. Under the Government Claims Act, Plaintiffs must present L.A. Care with a claim for monetary damages prior to bringing suit. Cal. Gov't Code § 945.4. Once an aggrieved party has properly presented a Government Claim, the governmental agency has at least 45 days to respond to that claim. *Id.* at § 912.4.

The Complaint does not allege that Plaintiffs complied with the Government Claims Act. Thus, the first through eighth claims for relief—all of which are claims for monetary damages—must be dismissed.

The Complaint does allege that Plaintiffs made a "[d]emand for payment of the unpaid and underpaid" St. Vincent Fee for Service Claims and St. Francis Fee for Service Claims. *See* Complaint at ¶¶ 18 and 45. These allegations are insufficient because the Complaint does not allege any facts demonstrating that the contents of these purported demands met the statutory definition of a Government Claim. Among other things, a Government Claim must include (1) the name and address of the claimant and the person to whom notices are to be sent; (2) a statement of the "date, place, and other circumstances of the occurrence or transaction"; (3) a description of the indebtedness, obligation, injury, damage, or loss incurred, as far as they are known when the claim is presented; (4) the name and public employee who caused the injury, if known; and (5) the amount claimed, if less than \$10,000, or if more than \$10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case. *See* Cal. Gov't Code § 910.

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Each Claim for Relief Fails to Allege Facts Sufficient to State a Claim

Even overlooking the failure to plead compliance with the Government Claims Act, each of Plaintiffs' claims is deficient. The claims for breach of contract are inadequately pleaded because Plaintiffs do not allege that the medical services which L.A. Care allegedly failed to provide were "covered medical services" within the meaning of the underlying contracts. Further, Plaintiffs do not plead facts showing that they complied with the contractual requirements to obtain prior authorization before performing the medical services, or that the claims Plaintiffs submitted were "Clean Claims" within the meaning of the contracts.

The claims for unjust enrichment must be dismissed because LA Care and Plaintiffs entered into enforceable written contracts, and "[a]s a matter of law, an unjust enrichment claim does not lie where the parties have an enforceable express contract." *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (Cal. 2010).

The claims for violation of the automatic stay fail because the deductions made by L.A. Care were recoupments, not setoffs, and L.A. Care was not required to obtain stay-relief before exercising the equitable remedy of recoupment. *See Sims v. U.S. Dep't of Health and Hum. Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008, 1011 (9th Cir. 2000) ("[R]ecoupment is an equitable doctrine that 'exempts a debt from the automatic stay when the debt is inextricably tied up in the post-petition claim'") (internal citation omitted).

The claim for injunctive relief fails because "injunctive relief is a remedy and not, in itself, a cause of action." *Marcus v. ABC Signature Studios, Inc.*, 279 F.Supp.3d 1056, 1073 (C.D. Cal. 2017). A request for injunctive relief should be included, if at all, in Plaintiffs' prayer for relief. *Hafiz v. Greenpoint Mortg. Funding, Inc.*, 652 F.Supp.2d 1039, 1049 (N.D. Cal. 2009).

C. Summary of Plaintiffs' Opposition

Plaintiffs make the following arguments in Opposition to the Motion.

The Arbitration Clause is Unenforceable Because it Conflicts with Bankruptcy Policies

Contrary to L.A. Care's argument, the turnover claims are core. Under § 542(b), debts that are "matured, payable on demand, or payable on order" are subject to turnover. In *Process Am., Inc. v. Cynergy Holdings, LLC (In re Process Am., Inc.)*, 588 B.R. 82, 100 (Bankr. C.D. Cal. 2018), the court rejected the argument that a

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"turnover action cannot involve the return of disputed funds," holding instead that "§ 542(b) makes no requirement that the debt be undisputed." Thus, the fact that L.A. Care disputes liability does not take this action outside the scope of turnover.

"In core proceedings the bankruptcy court, at least when it sees a conflict with bankruptcy law, has discretion to deny enforcement of an arbitration agreement." *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) (internal citations omitted). Arbitration would conflict with essential bankruptcy policies. Determination of what constitutes property of the estate subject to immediate turnover and what constitutes an improper setoff in violation of the automatic stay are critical bankruptcy issues that should be determined by this Court.

The Debtors are in Compliance with the Government Claims Act to the Extent it Applies

The Government Claims Act does not apply to "claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance." Cal. Gov't Code § 905(e). By its own admission, L.A. Care is a commission established "to provide health coverage to low-income Los Angeles County residents." Motion at p. 5 fn. 1. By its terms, § 905(e) excepts from the claim requirements any claims for goods and services rendered "for or on behalf of" any public assistance recipient. Therefore, claims for direct medical services provided to L.A. Care members (that is, the individuals receiving the "public assistance" of health care coverage through L.A. Care) may be submitted directly to litigation.

Even if the § 905(e) exception does not apply to Plaintiffs' claims, Plaintiffs have substantially complied with the Government Claims Act. On September 26, 2018, Plaintiffs submitted a letter to L.A. Care demanding payment for services provided to LA Care's members (the "Demand Letter"). On November 2, 2018, Plaintiffs sent L.A. Care a letter stating that L.A. Care had violated the automatic stay by engaging in the Setoffs (the "Stay Violation Letter"). The Demand and Stay Violation Letters put L.A. Care on notice of Plaintiffs' claims against it. Pursuant to Cal. Gov't Code § 910.8, if a claim that is presented fails to contain the information required by Gov't Code § 910, the public entity may give notice of the deficiencies within twenty days. A public entity that fails to provide such notice waives any defense as to the sufficiency of the claim. By failing to respond to the Demand Letter or the Stay Violation Letter, L.A. Care has waived its ability to assert that Plaintiffs' claims do not comply with the Government Claims Act.

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Plaintiffs' Claims are Adequately Pleaded

Plaintiffs' claims for breach of contract are adequately pleaded. The Complaint alleges that "L.A. Care has systematically and materially breached" the underlying contracts, and that Plaintiffs have "performed all terms and conditions required" under the contracts. Plaintiffs are required to present only a short and plain statement of the claim under Civil Rule 8(a).

With respect to Plaintiffs' claims for violation of the automatic stay, LA Care's contention that its actions were in the nature of recoupment rather than setoff is a defense, not a basis for dismissal of the claims. Whether L.A. Care's withholdings qualify as a setoff or as recoupment is an issue of fact that cannot be determined in the context of a motion to dismiss.

L.A. Care argues that the claims for unjust enrichment must be dismissed because the Complaint alleges that the parties entered enforceable written contracts. LA Care ignores the fact that Plaintiffs are entitled to assert alternative theories of recovery under Civil Rule 8(d)(2).

L.A. Care attacks Plaintiffs' claim for injunctive relief on the grounds that injunctive relief is a remedy, not an independent claim. The claim is properly grounded in the Bankruptcy Code, and could alternatively be stated as a claim for declaratory relief in light of L.A. Care's allegations of recoupment. Pursuant to Civil Rule 8(d), pleadings are to be construed "so as to do justice." Plaintiffs have properly stated a claim for injunctive relief.

Summary of L.A. Care's Reply

L.A. Care makes the following arguments in Reply to Plaintiffs' Opposition:

Plaintiffs were required to satisfy the Government Claims Act's claims presentation requirements before filing this action and were required to plead specific facts demonstrating that they did so. Plaintiffs attach to their Opposition 16 pages of documents not mentioned in the Complaint in an attempt to show that they presented L.A. Care with a Government Claim. These documents are not properly before the Court and should not be considered.

Even if the Court were to consider the documents attached to Plaintiffs' Opposition, Plaintiffs have not substantially complied with the Government Claims Act. Neither the Demand Letter or the Stay Violation Letter mention a Government Claim or the Government Claims Act. Plaintiffs sent the letters to L.A. Care's Chief

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Operating Officer, not to L.A. Care's clerk, secretary, auditor, or board, as required by Cal. Gov't Code § 915(a). If a claimant fails to deliver or mail the claim to one of the recipients specified in § 915(a), the claim does not "substantially comply with the act" even "if it is given to a person or department whose functions include the management or defense of claims against the defendant entity." *DiCampli-Mintz v. County of Santa Clara*, 55 Cal. 4th 983, 987 (2012). The reason is that "[m]isdirected claims may be received by various departments or employees and forwarded to multiple people and places, making it difficult to determine whether the claims were actually delivered to, or received by, a department or employee charged with the overall management of claims against the county"; such a result would be "contrary to the Government Claims Act's goal of eliminating uncertainty in the claims-presentation requirements." *Id.* at 997.

L.A. Care's failure to respond to the Demand Letter or the Stay Violation Letter did not waive L.A. Care's ability to challenge Plaintiffs' compliance with the Government Claims Act. Documents that do not substantially comply with the Government Claims Act, but which are still sufficiently cognizable as claims so as to require the public entity to comply with the statute's waiver provisions, are called "claims as presented." *See Phillips v. Desert Hospital Dist.*, 49 Cal.3d 699, 709 (Cal. 1989). To constitute a claim as presented, "the content of the correspondence to the recipient entity must at least be of such nature as to make it readily discernible by the entity that the intended purpose thereof is to convey the assertion of a compensable claim against the entity which, if not otherwise satisfied, will result in litigation." *Green v. State Ctr. Cmty. Coll. Dist.*, 34 Cal. App. 4th 1348, 1358 (Cal. 1995). Nothing in the Demand Letter or Stay Violation Letter stated that litigation would result if the dispute was not resolved. Consequently, neither letter amounts to a claim as presented, and L.A. Care was not required to respond to the letters to avoid waiving its defenses under the Government Claims Act.

II. Findings and Conclusions

The Federal Arbitration Act (the "Arbitration Act") provides that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract ..." 9 U.S.C. §§ 2-3. The Arbitration Act further provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such

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arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Id. at § 3.

"In non-core proceedings, the bankruptcy court generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement. In core proceedings, by contrast, the bankruptcy court, at least when it sees a conflict with bankruptcy law, has discretion to deny enforcement of an arbitration agreement." *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) (internal citations omitted). The reason for the core/non-core distinction is "that non-core proceedings are unlikely to present a conflict sufficient to override by implication the presumption in favor of arbitration, whereas core proceedings implicate more pressing bankruptcy concerns." *Id.* (internal citations and quotations omitted). However, because "not all core bankruptcy proceedings are premised on provisions of the [Bankruptcy] Code that 'inherently conflict' with the Federal Arbitration Act," a bankruptcy court "has discretion to decline to enforce an otherwise applicable arbitration provision only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." *Thorpe*, 671 F.3d at 1021.

The Complaint alleges that L.A. Care breached the terms of the St. Vincent/L.A. Care Agreement and the St. Francis/L.A. Care Agreement (collectively, the "Agreements"). Both Agreements provide that any disputes arising thereunder "shall be subject to binding arbitration" St. Vincent/L.A. Care Agreement at ¶ 2.6; St. Francis/L.A. Care Agreement at ¶ 3.6.

To determine whether the arbitration provision is enforceable, the Court must first determine whether the claims asserted in the Complaint are core. Plaintiffs do not contest that the claims for breach of contract and unjust enrichment are, standing alone, non-core. The parties dispute whether the claims for turnover, violation of the automatic stay, and injunctive relief are core.

The Court finds that the turnover claims are not core. "An action is outside the scope of section 542(b) unless there is a debt that is 'matured, payable on demand, or payable on order.' 11 U.S.C. § 542(b). Most courts require that the debt be undisputed for the action to be core." *DHP Holdings II Corp. v. Home Depot, Inc. (In re DHP*

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Holdings II Corp.), 435 B.R. 264, 271 (Bankr. D. Del. 2010). In *DHP Holdings*, the court found that a claim seeking turnover of accounts receivable was non-core because the defendant disputed that it owed the debt. Rejecting plaintiff's argument that defendant's dispute was merely a general denial that was too vague to defeat core jurisdiction, the court held that defendant's "answer disputing the account receivable and asserting entitlement to setoff and recoupment is sufficient to render the debt disputed." *Id.*

Along similar lines, the court in *MCI Telecommunications Corp. v. Gurga (In re Gurga)*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) found that a turnover claim predicated upon a breach of contract claim was non-core:

Despite Source's attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by Source entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes claims for relief for only one potential core issue—turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. Here, the amounts, if any, owed to Source by MCI are in dispute and this dispute rests on breach of contract issues. In fact, Source made a prepetition demand for arbitration of the dispute, described at that time as breach of contract and accounting causes of action. Breach of contract actions are noncore claims. *See* 28 U.S.C. § 157.

MCI Telecommunications Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (internal citations omitted).

Here, L.A. Care disputes its liability based on Plaintiffs' alleged failure to comply with the claims presentation requirements of the Government Claims Act. The Court makes no findings with respect to whether Plaintiffs complied with the Government Claims Act. **[Note 1]** The issues raised by L.A. Care as to Plaintiffs' compliance are sufficiently serious to render the alleged indebtedness subject to dispute. For example, L.A. Care asserts that the Demand and Stay Violation Letters did not contain all the requisite information required in a Government Claim, that the letters were not properly served, and that the letters did not sufficiently advise LA Care of the possibility of litigation. These issues are legitimate; L.A. Care cannot fairly be accused of asserting mere technicalities to defeat the Bankruptcy Court's jurisdiction.

Plaintiffs' allegations that L.A. Care setoff funds in violation of the automatic stay

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are core. However, the approximately \$360,000 sought on account of the alleged setoffs is dwarfed by the approximately \$25 million sought on account of the claims for breach of contract, unjust enrichment, and turnover.

Because the claims for breach of contract, unjust enrichment, and turnover are non-core, the Court lacks jurisdiction to decline to enforce the arbitration provision with respect to those claims. *Thorpe*, 671 F.3d at 1021. With respect to the core claims for violation of the automatic stay and injunctive relief, the Court may decline to enforce the arbitration provision "only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." *Id.* Given the comparatively small amount at issue in connection with the stay-violation and injunctive relief claims, the Court cannot find that arbitration would conflict with the underlying purpose of the Bankruptcy Code.

The facts here are easily distinguished from those of *Thorpe*, in which the court found that arbitration would conflict with bankruptcy policies. In *Thorpe*, Continental Insurance Company ("Continental") alleged that certain actions taken by the Debtor in its attempts to confirm a plan of reorganization violated a prepetition settlement agreement between Continental and the Debtor. *Thorpe*, 671 F.3d at 1022. Continental filed a proof of claim asserting damages for breach of the settlement, and argued that its claim should be subject to arbitration. *Id.* at 1017. Rejecting Continental's motion to enforce the settlement's arbitration clause, the *Thorpe* court held that the determination of whether Thorpe's actions in negotiating and propounding a plan of reorganization violated a settlement agreement was a matter of bankruptcy policy. *Id.* at 1022. The court reasoned that permitting an arbitrator to decide such an issue would conflict with the objectives of the Bankruptcy Code. *Id.*

Here, adjudication of the Complaint will determine whether the Plaintiffs/Debtors are entitled to receive damages from L.A. Care on account of an alleged breach of contract. If Plaintiffs/Debtors prevail, the estate will receive an infusion of cash. Allowing an arbitrator to decide whether the contract was breached, and therefore whether Plaintiffs/Debtors are entitled to damages, will not conflict with the Bankruptcy Code. Unlike the situation in *Thorpe*, having this matter heard by an arbitrator will not interfere with the Court's ability to oversee any plan of liquidation the Debtors may propose.

The Court will stay this action pending the completion of arbitration. Because the arbitration clause provides that disclosure and discovery shall be conducted in accordance with the provisions of the California Code of Civil Procedure, L.A. Care's motion for a protective order excusing compliance with its discovery obligations

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under the Federal Rules of Civil Procedure is GRANTED. A Status Conference shall be held on **June 19, 2019, at 10:00 a.m.** By no later than fourteen days prior to the hearing, the parties shall file a Status Report discussing the status of arbitration.

L.A. Care shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Note 1

The Court rejects Plaintiffs' argument that it was not required to comply with the Government Claims Act. It is true that the Government Claims Act does not apply to "claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance." Cal. Gov't Code § 905(e). Here, Plaintiffs are suing LA Care for money damages on account of breach of contract. While there is some ambiguity in the statute, the Court does not believe that a claim for money damages in the millions of dollars falls within the ambit of the § 905(e) exception. In reaching this conclusion, the Court notes that under California law, the "ultimate task" in statutory interpretation "is to ascertain the Legislature's intent." *People v. Massie*, 19 Cal.4th 550, 569, 79 Cal.Rptr.2d 816, 967 P.2d 29 (1998). Cal. Welf. & Inst. Code § 14087.9685(c) provides that "[a]ll claims for money damages" against a commission such as LA Care shall be governed by the Government Claims Act. This provision would be rendered superfluous if claims for money damages against LA Care were construed to fall within the § 905(e) exception.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel

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Chapter 11

John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By
Neal L Wolf
Anthony Dutra

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#17.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

fr: 3-12-19

fr. 4-2-19

Docket 1

Tentative Ruling:

4/2/2019

See Cal. No. 16, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#18.00 Hearing
RE: [17] Motion For Entry of Order Dismissing Complaint or, In The Alternative,
Motion For Entry of Order Staying Trial of Adversary Proceeding, And
Memorandum of Points And Authorities In Support Thereof

fr. 4-2-19

Docket 13

Tentative Ruling:

4/2/2019

See Cal. No. 16, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By

Neal L Wolf

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By

Steven J Kahn

**United States Bankruptcy Court
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Chapter 11

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 HearingRE: [1960] Motion to Reject Lease or Executory Contract Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. Section 365(A), Certain O'Connor Hospital and Saint Louise Regional Hospital Executory Contracts and Unexpired Leases; Memorandum of Points and Authorities; Declaration of Richard G. Adcock [Motion Re-Filed Only to Correct Event Code; Original Motion Filed at Docket No. 1673][Related Docket Nos. 365, 724, 810, 998, 1041, 1050, 1110, 1153, 1394, 1421, 1638, 1661]

Docket 1960

Tentative Ruling:

4/2/2019

Debtors shall appear to address whether the counterparties to the executory contracts and unexpired leases that the Debtors seek to reject received actual notice of the Motion. Provided that the counterparties received notice, the Court is prepared to grant the Motion.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. § 365(A), Certain O'Connor Hospital and Saint Louise Regional Hospital Executory Contracts and Unexpired Leases [Doc. Nos. 1673 and 1960] (the "Motion") [**Note 1**]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion to Reject, Pursuant to 11 U.S.C. § 365(A), Certain O'Connor Hospital and Saint Louise Regional Hospital Executory Contracts and Unexpired Leases

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On December 27, 2018, the Court approved the sale of Saint Louise Regional Medical Center ("St. Louise") and O'Connor Hospital ("O'Connor") to Santa Clara

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County ("SCC"). Doc. No. 1153 (the "SCC Sale Order"). The SCC Sale Order authorized the Debtors to assume and assign to SCC any of the Debtors' executory contracts and unexpired leases designated by SCC (the "Designated Contracts"). The sale closed on February 28, 2019.

The Debtors seek authorization to reject certain executory contracts and unexpired leases (collectively, the "Agreements") that were not designated for assignment by SCC. The Debtors state that the Agreements provided no benefit to the estates in view of the sale of St. Louise and O'Connor. The Official Committee of Unsecured Creditors (the "Committee") does not object to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

A. Notice and Service

There is no proof of service on the docket indicating that Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' claims and noticing agent, provided notice of this hearing to the counterparties to the Agreements that the Debtors seek to reject. Provided the Debtors can establish that the counterparties received actual notice of the Motion, the Court is prepared to grant the Motion.

B. The Court is Prepared to Grant the Motion Provided the Debtors Establish that Notice was Sufficient

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

The Debtors have shown that rejection of the Agreements is in the best interests of the estate. The Debtors no longer operate St. Louise or O'Connor and therefore have no need of the Agreements. SCC has not requested assignment of any of the Agreements. Rejection of the Agreements will reduce administrative expenses.

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III. Conclusion

The Court is prepared to grant the Motion provided the Debtors can establish that the counterparties to the Agreements received notice.

Note 1

The Motion was initially filed on February 28, 2019, as Doc. No. 1673. The Motion was refiled on March 29, 2019, as Doc. No. 1960, solely to correct the CM/ECF docket event code.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#100.00 Hearing
RE: [90] Motion for approval of chapter 11 disclosure statement Notice of Motion and Motion for Approval of Adequacy Debtor's Disclosure Statement Describing Chapter 11 Plan

Docket 90

***** VACATED *** REASON: AMENDED DISCLOSURE STATEMENT
FILED ON 2-22-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang
David Samuel Shevitz

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Monday, April 8, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr. 2-12-19

Docket 1

Tentative Ruling:

4/04/2019

Hearing required.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 8, 2019

Hearing Room 1568

10:00 AM

2:19-11947 Farid Ahmed Khan

Chapter 7

#100.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Chevrolet Silverado, VIN 3GCUKTEC1FG138084 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

4/04/2019

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject vehicle has a value of \$33,075 and is encumbered by a perfected security interest in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is no equity in the property. Movant is not protected by an equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral). Because the equity cushion in this

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case is less than 20%, the Court concludes that Movant's interest in the vehicle is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

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

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

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

Party Information

Debtor(s):

Farid Ahmed Khan

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 8, 2019

Hearing Room 1568

10:00 AM

2:19-12163 Al John N. Masorong

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: 1HGC R2F3 3HA1 65919 .

Docket 9

Tentative Ruling:

4/04/2019

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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

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

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Chapter 7

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

Party Information

Debtor(s):

Al John N. Masorong

Represented By
Sam Benevento

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#102.00 HearingRE: [1842] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Saleh v. Segal BC 718838 .

Docket 1842

Tentative Ruling:

4/04/2019

For the reasons set forth below, the Motion is GRANTED, except that Movants' request for retroactive annulment of the automatic stay is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [as to Debtor St. Francis Medical Center] [Doc. No. 1842] (the "Motion")
- 2) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Ebtissam Saleh, et al. [Doc. No. 1894]
- 3) Official Committee of Unsecured Creditors' Joinder to Debtors' Response to Motion for Relief from the Automatic Stay Filed by Ebtissam Saleh et al. [Doc. No. 1908]
- 4) Plaintiff's Reply to Debtor's Response to Motion for Relief of Stay Filed on Behalf of Ebtissam Saleh, et al. [Doc. No. 1993] (the "Reply")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Ebtissam Saleh, Lames Khanafer, Fatimah Khanafer, Rana Khanafer, Rim Khanafer, and Hussein Khanafer (collectively, "Movants"), seek stay-relief, pursuant to §362(d)(1), for the purpose of continuing to litigate a wrongful death action in the Los Angeles Superior Court (the "State Court Action") against the Debtors. Movants seek recovery only from applicable insurance and waive any deficiency or other claim

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against the Debtors or the Debtors' estates. Movants seek retroactive annulment of the stay to ratify their post-petition filing of a *Second Amended Complaint for Wrongful Death* (the "Second Amended Complaint") against Debtor St. Francis.

Debtors argue that the Motion should be denied as a sanction for the filing of the Second Amended Complaint. Debtors assert that the stay-violation was willful, noting that Movants were served with a *Notice of Stay* on October 19, 2018. The Official Committee of Unsecured Creditors (the "Committee") joins the Debtors' opposition to the Motion.

In Reply, Movants state that they filed the Second Amended Complaint in response to the request of a co-defendant, Dr. Segal, and that the Second Amended Complaint reduced the Debtors' potential exposure by removing a claim for medical negligence. Movants state that no proceedings occurred as a result of the filing of the Second Amended Complaint.

II. Findings and Conclusions

Movants filed the Second Amended Complaint without obtaining stay-relief. Unless the Court retroactively annuls the automatic stay, the filing of the Second Amended Complaint is void. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) (holding that "violations of the automatic stay are void, not voidable").

"[T]he proper standard for determining 'cause' to annul the automatic stay retroactively is a 'balancing of the equities' test." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003). In weighing the equities, the general trend has been to focus on two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

There is no admissible evidence before the Court with respect to whether Movants were aware of the bankruptcy petition. Debtors state that a *Notice of Stay* was served upon Movants on October 19, 2018. [Note 1] However, that *Notice of Stay* was inadvertently omitted from the Debtors' Opposition. Nothing in the papers filed by Movants indicates whether they were aware of the petition.

With regard to the second factor, Movants have failed to establish that the Debtors have engaged in unreasonable or inequitable conduct. There is no merit to Movants' contention that the bankruptcy petition was filed in bad faith to delay adjudication of Movants' claims against the Debtors. Movants point to the fact that the Debtors sought bankruptcy protection on August 31, 2018, shortly after the filing of Movants'

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Complaint on August 17, 2018. The close proximity between the filing of Movants' Complaint and the filing of the petitions is nothing more than coincidence. Debtors sought bankruptcy protection because they were losing \$175 million annually on a cash flow basis and required the protections of the Bankruptcy Code to liquidate their assets. *See generally* First Day Decl. of Richard G. Adcock [Doc. No. 8].

Retroactive annulment may also be justified where necessary to avoid prejudice to the party seeking stay-relief. Here, Movants have not made a sufficient showing of prejudice to be entitled to annulment. Movants checked the box on the Court's mandatory form requesting annulment, but did not include a supporting declaration setting forth facts justifying annulment. "The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws." *Schwartz*, 954 F.2d at 571 (citing H.R.Rep. No. 595, 95th Cong., 1st Sess. 340 (1978), reprinted in 1978 U.S.Code Cong. & Admin.News 5787, 5963, 6296-97). Movants must do more than check a box on a form if they wish to obtain annulment of the stay.

Because Movants have failed to establish that either factor applies, the request for annulment is denied. This means that the filing of the Second Amended Complaint is void. The Court declines the Debtors' and the Committee's request to deny stay-relief as a sanction for the filing of the Second Amended Complaint. On the present record, the Court cannot determine whether the stay violation was willful. Even if it was, denial of the Motion would be too severe a sanction. The filing of the Second Amended Complaint is void and therefore did not harm the Debtors or their estates.

The Court finds that stay-relief is appropriate. As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

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- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court held that "[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Id.*

Granting stay-relief at this time will not interfere with the Debtors' prosecution of these cases because Movants have agreed to limit their recovery to available insurance. To the extent they apply, the majority of the *Curtis* factors weigh in favor of stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is the tribunal best suited to hear the Movants' claims (factor three); litigation in the State Court will not prejudice creditors or other interested parties (factor seven); and lifting the stay will result in a more expeditious determination of the State Court Action (factor ten). Finally, given that the litigation will not interfere with the Debtors' prosecution of these cases, factor twelve—the impact of the stay on the parties—weighs in favor of granting the Motion and allowing Movants to obtain

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adjudication of their claims without further delay.

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III. Conclusion

Based upon the foregoing, the stay is lifted, pursuant to § 362(d)(1). Movants may proceed under applicable nonbankruptcy law to enforce their remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or property of the Debtors' estates. Movants' request that the order be binding and effective in any bankruptcy case commenced by or against the Debtors for a period of 180 days is DENIED. Movants' request for retroactive annulment of the stay is DENIED. Movants shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing. [Note 2]

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

Note 1

The claims regarding service of the *Notice of Stay* are presented only as argument in the Debtors' Opposition, and are not established by admissible evidence, such as a declaration from a person with knowledge.

Note 2

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

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CONT... Verity Health System of California, Inc.

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#1.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#2.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#3.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#6.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

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Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

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Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#8.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

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Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#9.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

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Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#100.00 HearingRE: [97] Motion for approval of chapter 11 disclosure statement Notice of Motion and Motion for Approval of Adequacy Debtor's Disclosure Statement Describing Chapter 11 Plan

Docket 97

Tentative Ruling:

4/8/2019

The Court will require the Debtor to make a few minor amendments to the Disclosure Statement, as discussed below. Otherwise, the Court finds that the Disclosure Statement contains adequate information.

Pleadings Filed and Reviewed

1. First Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 95] (the "Disclosure Statement")
2. First Amended Chapter 11 Plan of Reorganization [Doc. No. 89] (the "Plan")
3. Notice of Motion and Motion for Approval of Adequacy of Debtor's First Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 97] (the "Motion")
4. Response by First Amended Disclosure Statement [sic] [Doc. No. 101] (the "FGB Response")
5. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Andrew's & Sons Tradings, Inc. dba Beston Shoes (the "Debtor"), filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). The Debtor is an online wholesaler and retailer of shoes.

Pre-petition, the Debtor's annual sales reached more than \$11,000,000. However, in early 2018, the Debtor experienced financial difficulties that resulted in it defaulting on its loan obligations to Kings Cash Group ("KCG"). KCG filed suit and ultimately recovered a judgment against the Debtor on June 19, 2018. Shortly

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thereafter, KCG levied on the Debtor's bank account, which severely restricted the Debtor's cash flow. Additionally, on June 22, 2018, another of the Debtor's working capital lenders, EBF Partners, LLC, dba Everest Business Funding ("EBF") obtained a judgment against the Debtor and began directing the Debtor's clients to send payments owing to the Debtor directly to EBF. As a result, the Debtor was unable to afford its monthly rent obligations to its landlord, 8 Net, Inc. ("8 Net") so the Debtor began relocating its business. Notwithstanding its efforts to vacate, 8 Net filed an unlawful detainer action against the Debtor, obtained a default judgment on June 29, 2018, and seized all of the Debtor's remaining inventory. In response, the Debtor filed this case.

The Debtor presently seeks an order approving the adequacy of its Disclosure Statement. The Disclosure Statement details the events discussed above which led to this bankruptcy filing and provides a description of significant post-petition events. The Debtor states that it has reduced its monthly expenses and intends to engage in a marketing campaign to promote sales for its most profitable shoes. The Debtor has also been negotiating with its secured creditors to ensure that it will be able to service all of its secured debt and provide a dividend to general unsecured creditors pursuant to the terms of its proposed Plan.

The Debtor proposes a reorganization Plan that will be funded by the Debtor's post-petition business operations with an Effective Date that is fourteen days after the Court enters an order approving the Plan. The Debtor anticipates that it will have at least \$63,341.94 in available cash as of the Effective Date, generated from sales revenues. The Debtor submits that this is sufficient to pay \$36,950 in estimated administrative claims.

The Plan proposes the following classification scheme and treatments:

- **Class 1**: Secured claim of First General Bank ("Loan 1"). First General Bank ("FGB") holds a first-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$110,894.08. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$1,155.25 for a period of twelve years. FGB will retain its lien until paid in full. FGB's claim is impaired and it is entitled to vote on the Plan.
- **Class 2**: Secured claim of FGB ("Loan 2"). FGB holds a second-priority

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blanket security lien against the Debtor's assets, which secures debt in the amount of \$73,991.14. **[Note 1]** The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$863.40 for a period of ten years. FGB will retain its lien until paid in full. FGB's claim is impaired and it is entitled to vote on the Plan.

- **Class 3:** Secured claim of Amazon Capital Services, Inc. ("ACS"). ACS holds a third-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$477,488.27. **[Note 2]** The Debtor proposes to pay ACS in full, plus 5% interest, by making monthly payments of \$4,416 for a period of twelve years. ACS will retain its lien until paid in full. ACS's claim is impaired and it is entitled to vote on the Plan.
- **Class 4:** Secured claim of Kings Cash Group ("KCG"). KCG holds a fourth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$249,512.85. The Debtor proposes to treat KCG's claim as entirely unsecured and to pay KCG pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. KCG's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). KCG's claim is impaired and it is entitled to vote on the Plan.
- **Class 5:** Secured claim of EBF Partners, LLC dba Everest Business Funding and Corporation Service Company ("EBF"). EBF holds a fifth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$246,734.40. The Debtor proposes to treat EBF's claim as entirely unsecured and to pay EBF pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. EBF's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). EBF's claim is impaired and it is entitled to vote on the Plan.
- **Class 6:** Secured claim of Ally Financial ("Ally"). Ally holds a secured lien against the Debtor's 2011 Ford Truck F650, which secures debt in the amount of \$20,178.97. On or about November 20, 2018, the Debtor entered into an adequate protection stipulation with Ally [*See Doc. Nos. 72, 74*]. The Debtor proposes to pay Ally in full, plus 5.5% interest, by making monthly payments of \$490 through November 1, 2022 or until the claim is paid in full. Ally will retain its lien until paid in full. Ally's claim is impaired and it is entitled to vote on the Plan.
- **Class 7:** Secured claim of JP Morgan Chase Bank, N.A. ("Chase"). Chase holds a secured lien against the Debtor's 2015 Tesla Model S, which secures

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debt in the amount of \$47,414.57. On or about January 7, 2019, the Debtor entered into an adequate protection stipulation with Chase [*See* Doc. Nos. 79, 81]. The Debtor proposes to pay Chase in full, plus 5% interest, by making monthly payments of \$895 for a period of 60 months, or until the claim is paid in full. Chase will retain its lien until paid in full. Chase's claim is impaired and it is entitled to vote on the Plan.

- **Class 8**: Secured claim of Hong Kong Motors ("HKM"). HKM holds a secured lien against the Debtor's 2007 Nissan Altima, which secures debt in the amount of \$4,500. The Debtor proposes to bifurcate HKM's claim into a secured claim of \$2,835 (which the Debtor states is the current value of the collateral) and an unsecured claim of \$1,665. The Debtor proposes to pay HKM's secured claim in full, plus 5% interest, by making monthly payments of \$53 for a period of 60 months. HKM will retain its lien, up to the value of the collateral, until the secured portion of its claim is paid in full. The Debtor proposes to pay HKM's unsecured claim pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. HKM's claim is impaired and it is entitled to vote on the Plan.
- **Class 8(b)**: Secured claim of New Commercial Capital ("NCC"). NCC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that NCC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent NCC has a lien against any of the Debtor's assets, the Debtor proposes to strip NCC's lien as of the Effective Date. NCC will not be paid anything under the Debtor's Plan.
- **Class 8(c)**: Secured claim of Corporation Service Company as Representative ("CSC"). CSC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that CSC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that CSC has a lien against any of the Debtor's assets, the Debtor proposes to strip CSC's lien as of the Effective Date. CSC will not be paid anything under the Debtor's Plan.
- **Class 8(d)**: Secured claim of Bank of the West ("BoW"). BoW has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that BoW holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that BoW has a valid lien against any of the Debtor's assets, the Debtor proposes to strip BoW's lien as of the Effective Date. BoW will not be paid anything under the Debtor's Plan.

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- **Class 8(e)**: Secured claim of Employment Development Department ("EDD"). EDD filed a proof of claim asserting entitlement to a distribution of \$47.18. The Debtor has already paid EDD's claim in full. Accordingly, EDD is not impaired and is not entitled to vote.
- **Class 9**: This class consists of general unsecured claims ("GUC") totaling \$2,377,121. The Debtor proposes to pay \$47,542.42, which represents approximately 2% of the total GUC claims, by making pro rata monthly payments of \$792.37 for a period of five years. This class is impaired and all creditors in this class are entitled to vote.
- **Class 10**: This class consists Jiazheng Lu's 100% equity interest in the Debtor. Mr. Lu is an insider. Under the Plan, Mr. Lu will retain 100% of his ownership interest in the Debtor. Mr. Lu's claim is not impaired and he is not entitled to vote on the Plan.

First General Bank (the "FGB") submitted a timely response highlighting that the Debtor's proposed treatment for Classes 2 and 3 appear to invert the lien priority. FGB states that contrary to the current descriptions in the Debtor's proposed Disclosure Statement and Plan, it holds a second-priority blanket lien and Amazon Capital Services, Inc., holds a third-priority blanket lien against the Debtor's assets. Therefore, FGB requests that an order approving the Disclosure Statement require that the lien priority error be corrected.

As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re*

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Monnier Bros., 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Subject to the minor amendments discussed below, the Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement describes (1) the factors precipitating the Chapter 11 filing, (2) significant events that occurred during the Chapter 11 case, (3) the classification structure of the Plan, (4) a liquidation analysis, (5) a disclaimer, (6) risk factors, and (7) the means for execution of the Plan.

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However, the Court notes that the Disclosure Statement refers to Exhibits 1 – 5, but those exhibits are not attached. Accordingly, by no later than **April 16, 2019**, and prior to disseminating the voting package, the Debtor is directed to file a second amended disclosure statement that attaches those exhibits. Section IV.A.2.b should also be amended to read: "In this case, the Proponent believes that classes **one, two, three, four, five, six, seven, eight, eight(b), eight(c), eight(d), and nine** are impaired" and "The Proponent believes that classes **ten and eight(e)** are unimpaired" The amended disclosure statement should also cure the error identified by FGB with respect to the description of Classes 2 and 3.

Although the following are plan confirmation issues, the Debtor should be aware that the proposed plan in its present form must be crammed down on Classes 8(b), 8(c), and 8(d) because, pursuant to § 1126(g), those classes will be deemed not to have accepted the plan because the holders of those claims will not receive or retain any property under the plan on account of such claims. *See, e.g., In re Real Wilson Enters.*, 2013 Bankr. LEXIS 3997, at *9 (Bankr. E.D. Cal. Sep. 23, 2013). The Debtor should also be aware that the proposed plan in its present form cannot be confirmed over the opposition of the class of general unsecured creditors pursuant to § 1129(b)(2)(B). Here, the plan proposes to pay Class 9 general unsecured creditors only 2% of their total claim amount, but contemplates that the Class 10 equity holder, Jiazheng Lu, will retain 100% of his equity interest in the Debtor without contributing any new value.

- 1) A hearing will be held on the confirmation of the Debtor's Second Amended Chapter 11 Plan on **June 19, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Second Amended Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **April 19, 2019**. (As ordered above, the amended Disclosure Statement containing minor amendments described above must be submitted to the Court by **April 16, 2019**.)
- 3) **May 22, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written

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acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.

- 4) **May 29, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **June 5, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **June 12, 2019** is fixed as the last day on which the Debtor may file and serve its reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming proposed order within seven days of the hearing.

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

Note 1: As reflected in FGB's Response, the Disclosure Statement incorrectly refers to FGB's "third-priority" blanket lien, but FGB holds a second-priority blanket lien against the Debtor's assets.

Note 2: As reflected in FGB's Response, the Disclosure Statement incorrectly refers to ACS's "second-priority" blanket lien, but ACS holds a third-priority blanket lien against the Debtor's assets.

Party Information

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Debtor(s):

Andrew's & Son Tradings Inc.

Represented By

Christopher J Langley

Steven P Chang

David Samuel Shevitz

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9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr. 2-12-19

Docket 1

Tentative Ruling:

Hearing required.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#100.00 HearingRE: [775] Motion for order confirming chapter 11 plan Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr. and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service

Docket 775

Tentative Ruling:

4/9/2019

Hearing required. If no resolution of the Valensi Rose administrative claim issue is reached prior to the confirmation hearing, the Court would be inclined to send the matter to mediation. A consensual resolution would allow the plan to be confirmed and successfully end this nearly 7 year saga.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:17-18213 Pac Anchor Transportation Consisting of the Merger

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#101.00 Hearing
RE: [301] post confirmation status report

fr. 9-18-18; 12-5-18; 12--12-18

Docket 301

***** VACATED *** REASON: FINAL DECREE ENTERED 1-23-19**

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED and the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Joint Proposed Chapter 11 Plan of Reorganization [Doc. No. 282] (the "Plan")
2. Joint Proposed Chapter 11 Disclosure Statement Describing Plan of Reorganization [Doc. No. 283] (the "Disclosure Statement")
 - a. Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan [Doc. No. 358]
 - b. Proofs of Service of Disclosure Statement, Plan, and Voting Package [Doc. Nos. 360, 361, 362]
 - c. Order Continuing Deadlines Pertaining to Plan Confirmation [Doc. No. 377]
 - i. Proof of Service of Order Continuing Deadlines Pertaining to Plan Confirmation [Doc. No. 389]
3. Order Granting Debtor and Debtor-In-Possession's Motion for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and all Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 413]
 - a. Motion by Debtor and Debtor-In-Possession for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and all Others Similarly Situated Pursuant to Federal Rule

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- of Bankruptcy Procedure 9019 [Doc. No. 286] (the "Settlement Motion")
- b. Declarations of Alfredo Barajas, Elizabeth Zarate, Neil S. Lerner, and David R. Haberbush in Support of Motion by Debtor-In-Possession for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and all Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 287]
- 4. Order Sustaining Objection to Proof of Claim Number 12 Filed by the State of California, Department of Justice as Superseded by Proof of Claim Number 13 [Doc. No. 414]
- 5. Order Sustaining Objection to Proof of Claim Number 13 Filed by the State of California, Department of Justice: (1) for Improperly Claiming Rights of Priorities; and (2) as Duplicative of Proof of Claim Number 14 [Doc. No. 415]
- 6. Order Denying California's Objection to Class Proof of Claim of Carlos Mosquera and Juan F. Rodriguez [Proof of Claim Number 14] [Doc. No. 416]
- 7. Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 432] (the "Confirmation Brief")
- 8. Notice of Plan Confirmation Hearing [Doc. No. 433]
- 9. Plan Ballot Summary in Relation to Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 434] (the "Ballot Summary")
- 10. Amended Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 451]
 - a. Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 445] (the "People's Opposition")
 - b. Declaration of Timothy J. Kolesnikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 446] (the "Kolesnikow Decl.")
 - i. Amended Exhibits 1-3 to Declaration of Timothy J. Kolesnikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 450]
- 11. Reply to California's Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization

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[Doc. No. 455] ("Debtor's Reply")

- a. Request for Judicial Notice in Support of Reply to California's Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 456]
- b. Debtor and Debtor-In-Possession's Evidentiary Objections to Declaration of Timothy J. Kolsenikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 457]

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor") filed this voluntary chapter 11 case on July 6, 2017 (the "Petition Date"). The Debtor is a trucking company that provides trucking services throughout the Western United States. A material portion of its business is drayage to and from the Los Angeles and Long Beach ports.

The Debtor and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Proponents") seek confirmation of their *Joint Proposed Chapter 11 Plan of Reorganization* [Doc. No. 282] (the "Plan"). The material provisions of the Plan are as follows:

1. The Plan is a reorganizing plan. The Proponents seek to accomplish payment under the Plan with both pre- and post-confirmation income from the Debtor's continued business operations generated from the Effective Date through and including approximately January 1, 2024.
2. The Effective Date will be 10 days after entry of the order confirming the plan or final approval of the class action settlement in the Superior Court of the State of California. The Proponents estimate the Effective Date will be on or before December 31, 2018.
3. On the Effective Date, the Committee will cease to exist and will be replaced by a Plan Committee that will monitor Debtor's compliance with the Plan and serve as disbursing agent.
4. The Plan consists of 15 classes of claims. Only Class 11 and Class 14 are impaired and entitled to vote.

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5. Class 11 consists of general unsecured claims. The Plan proposes to pay Class 11 \$4,500,000 over approximately 5 years. This represents an approximate 21.116% distribution on such claims.
6. Class 14 consists of civil and tax penalty claims. The Plan proposes to pay Class 14 a one-time \$10,000 payment on January 1, 2024. This represents an approximate 0.02% distribution on such claims.
7. The Debtor shall establish a post-confirmation liquidating trust that will become effective on the Effective Date. Nigel Hamer (rather than Timothy J. Yoo or his designee), shall serve as trustee. In the event of an uncured default under the Plan, at the election of the Plan Committee, the assets of the Debtor will be transferred to and vest in the Liquidation Trust. Among other things, preferential and fraudulent transfer claims will be tolled, and the trustee will be vested with standing to pursue such claims.

Summary of the People's Opposition to the Plan

California's Attorney General, acting on behalf of the People of the State of California (the "People"), opposes confirmation of the Plan. The People assert that the Plan cannot be confirmed for the following reasons:

1. The Plan is not proposed in good faith as required by § 1129(a)(3) because the Debtor is still employing drivers as independent contractors allegedly in violation of California law and the Plan does not contain an injunction preventing the Debtor from classifying and treating drivers as independent contractors post-confirmation.
2. The Plan does not satisfy § 1129(a)(9) because the Plan does not provide for payment in full of the People's asserted priority Administrative Claim.
3. The Plan is not feasible as required by § 1129(a)(11) because the projections do not take into account an additional \$150,000 needed to pay 21 newly converted drivers as employees.
4. The Plan improperly releases third parties from liability in violation of § 524(e).

Summary of the Debtor's Reply

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The Debtor makes the following arguments in Reply to the People's Opposition:

1. The Plan is proposed in good faith. The Debtor has not employed any independent contractor drivers since September 1, 2017, and disputes that any of its employment practices have been in violations of California law. The Debtor's good faith is further demonstrated by its approved settlement with the truck drivers and commitment to only use employee drivers following the effective date of the plan. The Debtor does not object to including an injunction provision in the confirmation order.

2. The Plan is feasible. Debtor concedes that if the Administrative Claim is allowed, the Plan will be rendered infeasible, but the Debtor objects to the allowance of the Administrative Claim on a number of grounds (set forth in more detail in its objection to Motion to Allow Administrative Claim).

3. The Debtor's projections are not misleading. The Debtor utilizes Owner-Operator drivers and the projections take this change in business model into account.

4. The Plan does not release third parties from liability. The Settlement only releases insider claims for fraudulent conveyances and the People will retain its claim against Mr. Barajas in the state court action.

5. The People should be estopped from challenging the Plan on the basis of illegality and infeasibility because of its delay in challenging the Debtor's use of Owner-Operator drivers.

II. Findings of Fact and Conclusions of Law

A. The People's Objections are Overruled.

The People's objections are overruled in their entirety.

1. The People have not established that the Plan was not proposed in good faith within the meaning of § 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not

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statutorily defined but has been interpreted by case law as referring to a plan that ‘achieves a result consistent with the objectives and purposes of the Code.’ ‘The requisite good faith determination is based on the totality of the circumstances.’

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The People contend that the Plan is not proposed in good faith because the Debtor continues to misclassify its drivers in violation of California law and mislead this Court and its creditors. The Court finds that the People’s evidence in support of this contention is wholly insufficient and does not establish, even by a preponderance of the evidence, that the Plan was not proposed in good faith.

First, the People simply conclude that the Debtor is misclassifying its drivers in violation California law without identify which California law(s) it believes are implicated or any specific analysis as to how the Debtor’s conduct violated such provision(s). [Note 1]

Next, the People’s evidence does not support a finding that the Debtor has continued to misclassify drivers as "independent contractors" postpetition or that the Debtor intends to continue to do so after confirmation of the Plan. The People rely on the Debtor’s Monthly Operating Reports ("MORs") and Plan projections to establish the alleged ongoing misclassification, but as the Debtor points out, the People have conflated the terms "subcontractor" with "independent contractor." Debtor’s principal, Mr. Alfredo Barajas, testifies that the Debtor’s use of the term "subcontractors" includes "Owner-Operators, Entities, and non-drivers such as computer serving, maintenance on Debtor’s fuel pumps, and vehicle repairs." Barajas Decl., ¶ 11. The Court finds that this sufficiently undermines the People’s arguments on this point.

The Court also finds that the excerpts of deposition testimony from Mr. Barajas (Ex. 1 & 2), and Debtor’s former employee, Carlos Mosquera (Ex. 3) do not establish that the Debtor has continued to misclassify its employees. With respect to the Barajas testimony, the Court finds that most of the testimony was given pre-petition, on January 29, 2009, March 24, 2017, June 21, 2017 which the Court does not find particularly helpful in establishing alleged postpetition violations in light of Debtor’s testimony that it has changed its business model since filing this bankruptcy case. Mr.

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Barajas' postpetition testimony also does not establish that the Debtor has violated California law. The People did not provide the full deposition transcript and the excerpts that were provided make it difficult to determine the context in which the People's questions were propounded. As a result, the testimony is at times vague as to whether Mr. Barajas is describing postpetition or prepetition employment practices [Note 2] and whether Mr. Barajas is describing the Debtor's employment practices with respect to all subclasses of drivers (e.g., employees, Owner-Operators, Entities, Independent Contractors) or only with respect to employee drivers. [Note 3] The Court also does not find the Mosquera testimony useful because his testimony appears to describe his prepetition employment experience with the Debtor and the People's contention is that the Debtor has continued to misclassify drivers postpetition.

The Court is also unpersuaded by the People's contention that the Debtor's principal, Alfredo Barajas, has misled this Court with respect to the Debtor's postpetition employment practices. Debtor submitted the Declaration of Mr. Barajas in which he testifies that the Debtor began converting all of its drivers from independent contractors to employees at the outset of this case and has not used independent contractors since September 1, 2017. Barajas Decl., ¶¶ 9-10. Mr. Barajas further testifies that the Debtor has utilized four different types of drivers, including Owner-Operators (drivers who drive their own trucks) and submits that the People have never alleged that Debtor's use of Owner-Operators violates California law. *Id.*, ¶¶ 5, 6, 10.

Finally, the Court finds that the Debtor's agreement to include an injunction provision in the confirmation order will sufficiently address the People's concerns on this issue.

In sum, the Court finds that the Plan, which was proposed as a joint plan by the Debtor and the Committee of Unsecured Creditors, is designed to achieve results that are consistent with the Bankruptcy Code. The Debtor has changed its business model to prevent future litigation and through the Plan, the Debtor seeks to reorganize its affairs and avoid liquidation, while still paying out a large distribution to unsecured creditors.

2. The Plan Satisfies § 1129(a)(9)

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Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The People contend that the Plan does not satisfy § 1129(a)(9) because the Plan does not provide for payment in full of the People's asserted \$4,000,000 priority Administrative Claim on the effective date.

For the reasons set forth in the concurrently posted tentative ruling on the People's request for an administrative claim (See Cal. No. 5.50, December 12, 2018), the Court is prepared to deny the People's request for an Administrative Claim in full. Accordingly, the Debtor's Plan will not be rendered infeasible by the need to pay such claim and is not deficient within the meaning of § 1129(a)(9) in failing to provide for that claim. The People's objection is overruled on this basis.

3. The Plan satisfies § 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Court overrules the People's assertion that the Plan is infeasible under § 1129(a)(11), because its contention on this ground is premised entirely upon speculation and unsupported conclusions that the Debtor's projections do not take into account an extra \$150,000 in expenses arising from the Debtor's conversion of Owner-Operator drivers to employees following the Effective Date. However, as the Debtor explains, the People have incorrectly conflated the term "subcontractor" with "independent contractor." The Debtor submits that its projections have properly taken into account its new employment model. Barajas Decl., ¶¶ 12-17.

4. The Plan does not contain an improper release of third-party liability in violation of § 524(e)

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Section 524(e) states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity, for such debt." 11 U.S.C. § 524(e). Section 524(e) "precludes bankruptcy courts from discharging the liabilities of non-debtors." *Resorts Int'l v. Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995).

The People contend that the Plan improperly releases third parties from liability in violation of § 524(e) on two grounds. First, the People assert that "there is an indefinite stay of the Enforcement Action against owner Alfredo Barajas based in part upon expected confirmation of the plan. This is tantamount to a release of a third party, and deprives the People of their right to proceed against Mr. Barajas for his individual liability for misclassification." Amended Opposition, p. 21:27-22:2.

However, the People are mistaken that the Court has issued an indefinite stay of the Enforcement Action against Mr. Barajas by way of its *Order Granting Motion for Preliminary Injunction* in the *Pac Anchor, Transportation, Inc., Consisting of the Merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. v. People of the State of California, ex rel. Xavier Becerra, Attorney General of the State of California*, Adv. Case No. 2:18-ap-01244-ER (the "Adversary Proceeding"), docket number 40. That order only imposes a preliminary injunction with respect to enforcement of the Enforcement Action against the Debtor. *Id.* In fact, in Debtor's reply in support of its request for a preliminary injunction, the Debtor states "Debtor is not requesting a stay as to Mr. Barajas. The Motion only seeks injunctive relief as to Debtor." Adversary Proceeding, Dkt. 34, PDF p. 18: 9-10.

Second, the People contend that the Plan effectuates the provisions of a court approved settlement between the Debtor, committee of unsecured creditors, and Carlos Mosquera and Juan Francisco Rodriguez on behalf of themselves and all others similarly situated [Doc. Nos. 286, 287 & 413] (the "Settlement"), that the People assert improperly releases Alfredo Barajas and Elizabeth Zarate (the "Insiders") from fraudulent transfer liability. Although the People fail to reference the specific provision it finds objectionable, that provisions states:

In the event that Alfredo Barajas and Elizabeth Zarate file a petition seeking relief under Title 11 of the United States Code, which petition is not dismissed prior to confirmation of a plan under chapter 13 or 11

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or approval of a final report under chapter 7, the Liquidating Trustee shall have a claim in the sum of \$100,000 in full and complete satisfaction of any and all claims that may exist against Alfredo Barajas and/or of Elizabeth Zarate arising under California law arising under California law or arising under 11 U.S.C. § 542 et seq.

Doc. No. 287-1, Settlement, ¶ 5.

The People contend that this provision is tantamount to the release of third parties' liability. The Court does not agree. The Court approved this provision as part of a broader settlement within the context of a motion brought under Federal Rule of Bankruptcy Procedure 9019, based upon this Court's determination that it was one of several forms of bargained for consideration. The Court concluded that the provision was a liquidation of potential judgment liability against the Insiders, based upon the Committee's determination that the Insiders were largely judgment proof. Furthermore, the provision is not akin to a general release of liability on all claims that could be brought against the Insiders. Instead, it is a limited release respecting the Estate's § 542 fraudulent transfer claims against the Insiders. Accordingly, the People's objections are overruled on this basis.

For the foregoing reasons, the Court finds that the Plan does not violate § 524(e).

B. The Plan Complies with All Applicable Provisions of 11 U.S.C. § 1129

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The Plan is confirmed.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

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1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 112(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan appropriately classifies administrative expense claims and unsecured priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that Classes 1 – 10, 12, 13 and 15 are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

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The Plan specifies the treatment of impaired Classes 11 and 14. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by income generated by the Debtor's pre- and post-confirmation business operations. The Debtor anticipates having approximately \$2,288,000 of cash on hand on the Effective Date of the Plan to pay anticipated effective date payments. The Proponents submitted evidence in support of Debtor's ability to adequately implement the Plan, in the form of: (1) balance sheets and income statements for the years of 2014, 2015, and 2016 (Disclosure Statement, Exhibit B), and (2) financial projections for the anticipated duration of the Plan (Disclosure Statement, Exhibit C). The proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Plan specifies that the Debtor's bylaws will be amended to include the requisite language set forth above. The Plan satisfies § 1123(a)(6).

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9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Reorganized Debtor will be managed by the sole shareholder, general manager, President and CEO, Alfredo Barajas, and Mr. Barajas' wife, Elizabeth Zarate (together, the "Insiders"). The Insiders will receive compensation for their management services as set forth in paragraph 15 of the Declaration of Alfredo Barajas (the "Barajas Decl.") filed in support of the Confirmation Brief. In addition, non-insider employee Bianca Bugarin will be responsible for all financial matters. The Insiders and Ms. Bugarin have extensive experience in the daily management of the Debtor. The Plan satisfies § 1123(a)(7).

10. Section 1123(a)(8)

Section 1123(a)(8) which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Plan Proponents have:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan" [Doc. No. 358]);
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Application by Debtor-In-Possession to Employ Trojan and Company Accountancy Corporation as Special General Certified Public Accountant" [Doc. No. 63], "Order Granting Application of Debtor-In-Possession to Employ Cox Wooton Lerner Griffin & Hansen LLP as Special Employment Law Counsel" [Doc. No. 64], "Order Granting Application by Debtor-In-Possession to Employ Haberbush & Associates, LLP as General Bankruptcy Counsel" [Doc. No. 65], "Order Granting Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P., as Bankruptcy Counsel for the Official Committee of Unsecured Creditors" [Doc. No. 78], and "Order Granting Application to Employ Armory Financial Consulting as Financial Advisor for the Official Committee of Unsecured Creditors" [Doc. No. 197]); and

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3) Filed monthly operating reports.

Accordingly, the Plan Proponents have satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

As discussed in section II.A.1 above, the Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Plan Proponents have complied with the requirements of the Code throughout this case. The Court rejects the People's contentions and finds that the Plan was proposed in good faith. Section 1129(a)(3) is satisfied.

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides that all professional fees are subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy.

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Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses that Mr. Barajas, an insider, will continue to serve as the Debtor's president and chief executive officer subsequent to confirmation. The Plan further discloses that Ms. Burgin, a non-insider employee, will be responsible for all financial matters of the Debtor subsequent to confirmation. The Barajas Decl. filed in support of the Plan and Disclosure Statement disclose the identities, relationships, roles and post-confirmation compensation of five additional insider employees. The Plan discloses that a Liquidating Trust will be created on the Effective Date and that Nigel Hamer as the Liquidating Trustee. The Plan satisfies § 1129(a)(5).

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1-10, 12, 13 and 15 are unimpaired and are deemed to have accepted the Plan. Classes 11 and 14 have accepted the Plan. *See* Ballot Summary [Doc. No. 434]. Section 1129(a)(7) is satisfied because all classes of creditors have accepted the Plan.

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

Classes 1-10, 12, 13 and 15 are unimpaired and are deemed to have accepted the Plan. Classes 11 and 14 have accepted the Plan. *See* Ballot Summary [Doc. No. 434].

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Section 1129(a)(8) is satisfied because all classes of creditors have accepted the Plan.

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of administrative claims and the priority tax claims of the Franchise Tax board and Los Angeles County Tax Collector in full on or before the Effective Date. Class 10 consists of priority unsecured wage claims. Pursuant to an order of this Court, the Debtor paid the priority unsecured wage claims in full after the commencement of this case. *See* Barajas Decl., ¶ 24; "Order Granting Emergency Motion of Debtor and Debtor-In-Possession for an Order Authorizing Debtor-In-Possession to Pay Pre-Petition Payroll and Related Payroll Taxes and to Honor Pre-Petition Employment Procedures" [Doc. No. 28].

As discussed above in section II.A.2, the People have not established entitlement to an Administrative Claim for penalties pursuant to § 503(b). Accordingly, the Plan need to provide for such claim.

The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Classes 11 and 14 are impaired, do not consist of insiders, and have accepted the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

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The Debtor has sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon its review of the budget projections included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Court has overruled the People's objections on this ground for the reasons set forth above in section II.A.3.

The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan provides that on the Effective Date, all claims arising under 11 U.S.C. § 542 et seq., together with any and all other claims (the "Adversarial Claims") which may be made against Debtor's insiders (as defined by Title 11 of the United States Code), shall vest exclusively in a Liquidating Trust in accordance with applicable

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nonbankruptcy law, and confers standing to pursue such Adversarial Claims upon the liquidating trustee. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, does not apply. All impaired classes (Classes 11 and 14) have accepted the Plan.

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

C. Evidentiary Objections

- 1) **Kolesnikow's Decl. ¶10 [Page 3, lines 16-19]. Ruling:** Objection overruled.
- 2) **Kolesnikow's Decl. ¶11 [Page 3, lines 21-26]. Ruling:** Objection sustained. Lack of foundation, legal conclusion, argumentative.
- 3) **Kolesnikow's Decl. ¶12 [Page 3, line 27 and Page 4, lines 1-19]. Ruling:** Objection overruled.
- 4) **Kolesnikow's Decl. ¶13 [Page 4, lines 20-21]. Ruling:** Objection overruled.
- 5) **Kolesnikow's Decl. ¶14 [Page 4, lines 22-28 and Page 5, lines 1-8]. Ruling:** Objection sustained as to "The running totals contained in the monthly operating reports filed with this Court show Pac Anchor paid independent drivers as 'subcontractors' \$4.2 million during the pendency of this bankruptcy case." Argumentative, legal conclusion, lack of foundation. Objection sustained as to "Mr. Barajas testified in connection with the similar, December, 2017 Monthly Operating Report 6, Main Bankruptcy, Doc. No. 418, that the 'subcontractors'

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were owner-operator drivers or owners of trucks who provided drivers to Debtor.”
Argumentative, legal conclusion, lack of foundation. Objection overruled as to the remaining testimony.

- 6) **Kolesnikow’s Decl. ¶15 [Page 5, lines 9-14]. Ruling:** Objection sustained.
Argumentative, legal conclusion.
- 7) **Kolesnikow’s Decl. ¶16 [Page 5, lines 18-22]. Ruling:** Objection sustained as to “The projections in support of the plan indicate that the Debtor will continue to use ‘Independent Contractor’ drivers.” Objection overruled as to the remaining testimony.
- 8) **Kolesnikow’s Decl. ¶17 [Page 5, lines 23-27 and Page 6, lines 1-3]. Ruling:** Objection sustained as to the word “drivers” following the word “subcontractor” and as to “Debtor continued to classify drivers as independent contractors throughout the pendency of the bankruptcy.” Argumentative, legal conclusion, lack of foundation, lack of personal knowledge. Objection overruled as to the remaining testimony.
- 9) **Kolesnikow’s Decl. ¶18 [Page 6, lines 4-16]. Ruling:** Objection sustained.
Argumentative, legal conclusion, lack of personal knowledge.
- 10) **Kolesnikow’s Decl. ¶19 [Page 6, lines 17-28 and Page 7, line 1]. Ruling:** Objection sustained. Argumentative, legal conclusion, lack of personal knowledge.
- 11) **Kolesnikow’s Decl. ¶20 [Page 7, lines 3-5]. Ruling:** Objection sustained.
Argumentative, lack of foundation, lack of personal knowledge.
- 12) **Kolesnikow’s Decl. ¶21 [Page 7, lines 7-11]. Ruling:** Objection overruled.
- 13) **Kolesnikow’s Decl. ¶22 [Page 7, lines 12-16]. Ruling:** Objection sustained.
Argumentative, lack of foundation, lack of personal knowledge.
- 14) **Kolesnikow’s Decl. ¶23 [Page 7, lines 20-28]. Ruling:** Objection sustained.
Argumentative, lack of foundation.
- 15) **Kolesnikow’s Decl. ¶25 [Page 8, lines 21-28 and Page 9, lines 1-7]. Ruling:** Objection overruled.
- 16) **Kolesnikow’s Decl. ¶26 [Page 9, lines 8-12]. Ruling:** Objection overruled.
- 17) **Kolesnikow’s Decl. ¶27 [Page 9, lines 14-22]. Ruling:** Objection sustained as to “Debtor cannot demonstrate that the drivers were free from direction and control.” Argumentative, lack of foundation, lack of personal knowledge. Objection overruled as to the remaining testimony.
- 18) **Kolesnikow’s Decl. ¶28 [Page 9, lines 24-28 and Page 10, lines 1-16]. Ruling:** Objection sustained. Argumentative, lack of foundation, legal conclusion, lack of

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personal knowledge.

- 19) **Kolesnikow's Decl. ¶29 [Page 10, lines 17-27]. Ruling:** Objection sustained as to "Debtor admits that it cannot operate their [sic] business without the victim drivers." Argumentative. Objection overruled as to the remaining testimony.

III. Conclusion

Based upon the foregoing, the Plan is confirmed. The Court will conduct a post-confirmation status report on April 10, 2019. The Debtor is directed to file a post-confirmation status report 14-days prior to the hearing.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. The confirmation order shall include a provision incorporating the injunction contemplated in the Settlement Agreement.

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

Note 1: The Court presumes the People's contentions regarding violations of California law mirror the claims pled in its state court complaint. However, those claims have not been finally adjudicated in the People's favor and the Debtor continues to dispute that its conduct violated California law. Accordingly, even if the Court presumes the claims pled in the state court complaint are the same state court violations issue here, there is insufficient evidence before this Court to conclude that the Debtor's post-petition employment practices violated California law.

Note 2:

"Q: Okay. So *would* drivers get in trouble if they *didn't* keep the outside of their truck clean?

A: No. They *would* get pulled over by the police and questioned on why the truck was

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so dirty."

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Barajas Transcript, Monday January 29, 2018, Volume 5, p. 645:16-19 (emphasis added).

Note 3:

"Q: How do you determine how much you're going to be paying *drivers* for Pac Anchor and Green Anchor? How do you determine the rate schedule specifically?

A: Pretty much according to what the customers pay."

Barajas Deposition Transcript, Wednesday, June 21, 2017, p. 535:1-4 (emphasis added).

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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Adv#: 2:19-01004 Peterson v. Peterson

#200.00 HearingRE: [34] Motion to Dismiss Adversary Proceeding and Notice of Motion

Docket 34

Tentative Ruling:

4/9/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED and the Complaint is dismissed with prejudice. The Motion for Sanctions is DENIED.

Pleadings Filed and Reviewed:

- 1) First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6) [Adv. Doc. No. 10] (the "Complaint")
- 2) Anne Lan Peterson's Motion to Dismiss:
 - a) Notice of Motion and Motion to Dismiss First Amended Complaint for Failure to State a Claim for Relief [Adv. Doc. No. 34] (the "Motion to Dismiss")
 - b) Plaintiff's Opposition to Defendant Anne Peterson's Motion to Dismiss [Adv. Doc. No. 42]
 - c) Debtor's Reply in Support of Motion to Dismiss First Amended Complaint for Failure to State a Claim for Relief [Adv. Doc. No. 49]
 - i) Notice of Errata to Correct Misstatement of Record [Adv. Doc. No. 47]
- 3) Anne Lan Peterson's Motion for Sanctions:
 - a) Notice of Motion and Motion for Sanctions Against Ronald Peterson and his Counsel Pursuant to Bankruptcy Rule 9011 [Adv. Doc. No. 38] (the "Motion for Sanctions")
 - b) Plaintiff's Opposition to Defendant Anne Peterson's Motion for Sanctions [Adv. Doc. No. 44]
 - i) Declaration of David B. Lally, Esq. in Support of Opposition to Defendant Anne Peterson's Motion for Sanctions [Doc. No. 44]
 - c) Debtor's Reply in Support of Motion for Sanctions Against Ronald Peterson and his Counsel Pursuant to Bankruptcy Rule 9011 [Adv. Doc. No. 48]

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I. Facts and Summary of Pleadings

A. Background

To provide context for the conclusions set forth herein, the Court describes the history of this case and its prior rulings in detail.

Anne Lan Peterson (the "Debtor") filed a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

On March 13, 2013, upon the motion of the United States Trustee (the "UST"), Debtor's case was reopened to permit the UST to investigate whether to file a complaint to revoke the Debtor's discharge based upon concealment of assets. Bankr. Doc. No. 23. The UST did not file a complaint to revoke the Debtor's discharge. On June 14, 2013, the Debtor's case was closed for the second time. Bankr. Doc. No. 30.

On July 6, 2016, again upon the motion of the UST, the Debtor's case was reopened, and a Chapter 7 Trustee (the "Trustee") was appointed. The UST brought this second motion to reopen after the Trustee who had originally served was contacted by Debtor's spouse, Ronald Peterson ("Ronald"), and was advised that Ronald intended to purchase undisclosed community property assets of the estate for a price in excess of \$100,000. Decl. of Brad Krasnoff [Bankr. Doc. No. 31] at ¶ 5.

1. The Trustee's Complaint and Ronald's Purported Cross-Complaint

On January 22, 2018, the Trustee filed the *Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Violation of Automatic Stay; and (5) For Dissolution of Limited Liability Company* [Adv. Doc. No. 21] (the "Turnover Complaint") against Ronald Peterson ("Ronald") [**Note 1**] and two limited liability companies—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Turnover Complaint sought a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Turnover Complaint sought turnover of the Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

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On February 26, 2018, Ronald, Maitreya Nevada, and Maitreya Arizona filed an Answer to the Turnover Complaint. Adv. Doc. No. 42. The Answer asserted four affirmative defenses but did not assert any counterclaims.

On June 7, 2018, the Court conducted a hearing on the Trustee's motion for summary judgment (the "MSJ") on the Turnover Complaint's first, third, and fifth claims for relief. On June 6, 2018—the day prior to the hearing on the MSJ—the Court posted, at 12:20 p.m., a tentative ruling indicated its intent to grant the MSJ. Approximately eleven hours later, at 11:03 p.m., Ronald filed a *Cross-Complaint for: (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; and (4) Negligence* [Bankr. Doc. No. 64; Adv. Doc. No. 66] (the "Purported Cross-Complaint") [Note 2] against the Trustee and the Debtor.

On June 14, 2018, the Court entered summary judgment, in the Trustee's favor, on the Turnover Complaint's first, third, and fifth claims for relief. Adv. Doc. No. 64 (the "Judgment"). Among other things, the Judgment provided that the Property is "community property of the Debtor and Ronald," and further provided that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)" Judgment at ¶¶2–3. The Court found that the filing of the Purported Cross-Complaint was not cause to delay entry of the Judgment. In addition, the Court found, pursuant to Civil Rule 54(b), that there was no just reason to delay entry of final judgment in the Trustee's favor with respect to the first, third, and fifth claims for relief. The Court ordered the Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Judgment at ¶5.

Defendants failed to turnover the Property to the Trustee as ordered by the Court. On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment (the "Motion for Reconsideration"). See Memorandum of Decision Denying Motion for Reconsideration [Adv. Doc. No. 96] and Order Denying Motion for Reconsideration [Adv. Doc. No. 97]. In the Motion for Reconsideration, Defendants asserted that the only claims filed in the Debtor's bankruptcy case were on account of debts the Debtor incurred after she separated from Ronald. Defendants maintained that as a result, the claims were not payable from property of the estate because they did not qualify as "community claims" within the meaning of §101(7). Defendants' theory was that the absence of any creditors entitled to receive a distribution from the estate precluded the Trustee from administering estate property. In denying the Motion for Reconsideration, the Court noted that Defendants had been provided an opportunity to present their arguments before the Court entered the Judgment, but had failed to do so. Observing that Defendants had offered no explanation whatsoever for

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their failure to timely raise these arguments, the Court determined that the "extraordinary circumstances" necessary to support reconsideration were not present. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007).

Concurrently with the denial of the Motion for Reconsideration, the Court directed the Clerk of the Court to issue a Writ of Possession, authorizing the United States Marshal (the "U.S. Marshal") to enforce the Judgment by placing the Trustee in possession of the Property. Adv. Doc. No. 98. On August 10, 2018, the U.S. Marshal evicted Ronald, his fiancée, and their two children from the Property.

On July 26, 2018, Ronald appealed the Court's denial of his Motion to Reconsideration to the District Court. Adv. Doc. No. 110. On November 16, 2018, the District Court dismissed Ronald's appeal with prejudice for failure to prosecute. Adv. Doc. No. 145.

The Purported Cross-Complaint filed by Ronald on the eve of the summary judgment hearing alleged, among other things, that Ronald and the Trustee had entered into a contract providing that Ronald would purchase the estate's interest in the Property for \$125,000, but that the Trustee breached the contract notwithstanding Ronald's fulfillment of all his obligations thereunder. Purported Cross-Complaint at ¶¶30–33. [Note 4]

On June 18, 2018, the Court issued an order requiring Ronald to appear and show cause why the Court should not (1) construe the Purported Cross-Complaint as a Counter-Complaint, (2) find that the claims asserted in the Counter-Complaint are compulsory, and (3) dismiss the Counter-Complaint as untimely. Adv. Doc. No. 69. In its *Preliminary Findings and Conclusions*, the Court first found that the Purported Cross-Complaint was more properly characterized as a Counter-Complaint, because it sought relief against an opposing party (the Trustee), not a co-party. The Court next found that the claims asserted in the Purported Cross-Complaint were compulsory counterclaims, because they arose from the same set of operative facts as the claims asserted in the Complaint.

On July 27, 2018, the Court entered an order adopting its *Preliminary Findings and Conclusions* and dismissing the Purported Cross-Complaint, as to the Trustee, with prejudice. Adv. Doc. No. 113 (the "Dismissal Order"). The Dismissal Order is now final and non-appealable.

2. Ronald's Claim Objections

On August 16, 2018, the Court overruled Ronald's objections to Proofs of Claim

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filed by Shaco, Inc. ("Shaco") and Kathy K. Settle ("Ms. Settle"). The Court found that Ronald's claim objections were an improper attempt to gain a litigation advantage in the adversary proceeding brought by the Trustee:

In his Claim Objections, Ronald asserts that the claims do not qualify as "community claims" and therefore may not be paid from the estate's community property. The estate's primary community property asset is the Property. As discussed above, Ronald has vigorously contested the Trustee's attempts to enforce the Judgment and gain possession of the Property. Ronald's objective in prosecuting the Claim Objections is to prevent the Trustee from enforcing the Judgment.

Ronald raised the arguments he asserts now in his motion for Reconsideration of the Judgment. In denying Ronald's Motion for Reconsideration, the Court found that Ronald had failed to show that "extraordinary circumstances" excused his failure to timely raise his arguments regarding the allowability of the claims. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Based upon this finding, the Court refused to consider the arguments. Ronald cannot procedurally circumvent the Court's determination by now seeking to present these identical arguments in a different context.

The Court declines to find that Ronald lacks standing to object to the claims. It would be more precise to say that the Ronald has interposed the Claim Objections for the improper purpose of attempting to escape the consequences of his failure to timely raise the arguments he now presents. Had Ronald timely raised these arguments in opposition to the Trustee's motion for summary judgment, they would have been properly before the Court. But raising the arguments now—after the Court's express determination that the arguments would not be considered because they were untimely—is not proper.

Final Ruling Overruling Objection to Claim Number 2 [Bankr. Doc. No. 81] at 4–5.
[Note 4]

The Court went on to find that even had Ronald's claim objections been properly before it, the objections lacked merit. With respect to Ronald's argument that the Trustee was barred from administering any of the estate's community property because there were no creditors eligible to receive a distribution from such property,

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the Court stated:

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Where an estate includes community property, distribution of such property is governed by §726(c). Section 726(c) provides a framework for the distribution of community property to holders of community claims.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [estate community property], whether or not there is any such property at the time of the commencement of the case." §101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Court assumes without deciding that the indebtedness asserted by the claimants was incurred by the Debtor after she separated from Ronald. As such, the claims would not constitute community claims.

To provide for the distribution of community property, §726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

The distribution contemplated by the Trustee is consistent with the § 726(c). First, the Trustee will liquidate the Property, the estate's primary community asset. Once the Property has been liquidated, costs of administration will be paid from cash on hand. Subsequent to the payment of costs of administration, the remaining funds will be divided in half, with one half allocable to the Debtor, and the other allocable to Ronald. Once the remaining funds have been divided, the Debtor's share of such funds will no longer constitute community property. Instead, such funds will be property of the estate liable for separate property claims against the Debtor—such as the claims asserted by Shaco and Settle (provided that such claims are in fact

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properly characterized as separate property claims). Such funds may be distributed to the claimants pursuant to §726(c)(2)(C).

Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), aff'd sub nom. *Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10. The precise manner in which funds will be distributed is not yet before the Court. However, contrary to Ronald's contention, funds can be distributed to claimants in a manner consistent with §726(c) and other applicable provisions of the Bankruptcy Code.

Id. at 5–7.

3. The Trustee's Sale Motion and Ronald's Assertion of a Homestead Exemption

On December 6, 2018, the Court approved, over Ronald's opposition, the Trustee's motion to confirm the sale of the Property to Jose Mclat and Cristina Criss (the "Sale Motion"). Bankr. Doc. Nos. 119–20. Although the sale was free and clear of liens, the Court found that the Debtor's spousal support lien in the principal amount of \$61,474 would attach only to Ronald's share of the net sale proceeds, subject to a further ruling determining the extent of Ronald's share.

In opposition to the Sale Motion, Ronald contended that the Trustee was required to pay him 50% of the sales proceeds directly from escrow on account of Ronald's purported \$100,000 homestead exemption in the Property. The Court rejected Ronald's contention, finding that it was not procedurally proper for Ronald to assert his alleged entitlement to a homestead exemption by way of an opposition to the Sale Motion. The Court further noted that where, as here, the Debtor had claimed exemptions, a non-debtor spouse such as Ronald was not necessarily entitled to assert supplemental exemptions. The Court stated that it would determine the validity of any homestead exemption asserted by Ronald if and when Ronald properly filed a claim of exemption.

On December 29, 2011, Debtor filed Schedule C, claiming various property as exempt. Bankr. Doc. No. 11. Debtor did not assert an exemption in the Property. On February 1, 2012, Debtor filed an Amended Schedule C, but again did not assert an

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exemption in the Property. Bankr. Doc. No. 15. On December 14, 2018, Ronald filed a Schedule C, pursuant to §522(l), asserting a \$100,000 exemption in the Property.

4. The Trustee's Interim Fee Application and Motion for Authorization to Pay Administrative Expenses from Community Property Proceeds Held by the Estate

On December 21, 2018, the Court awarded Danning, Gill, Diamond & Kollitz LLP ("DGDK"), the Trustee's general bankruptcy counsel, fees of \$152,611.00 and expenses of \$9,598.10, on an interim basis. Bankr. Doc. No. 131. Over Ronald's opposition, the Court authorized the Trustee to pay DGDK's allowed fees and expenses from the proceeds of the sale of the Property (the "Sale Proceeds"). Bankr. Doc. No. 130.

The Court found that payment of DGDK's allowed fees and expenses from the Sale Proceeds was consistent with § 726(c)(1):

Section 726(c)(1) provides that administrative expense claims shall be paid either from community property of the estate, or from other property of the estate, "as the interest of justice requires." The legislative history contains specific examples of how this may be done:

First, administrative expenses are to be paid, as the court determines on any reasonable equitable basis, from both kinds of property. The court will divide administrative expenses according to such factors as the amount of each kind of property in the estate, the cost of preservation and liquidation of each kind of property, and whether any particular administrative expenses are attributable to one kind of property or the other.

House and Senate Reports to Bankruptcy Reform Act of 1978 (H.R. Rep. No. 595, 95th Cong., 1st Sess. 383–384 (1977); S. Rep. No. 989 95th Cong., 2d Sess. 97–98 (1978)).

Here, all property held by the estate is community property. The Court finds that the interests of justice permit payment of the estate's administrative expenses from community property. The vast majority of administrative costs were incurred in connection with the Trustee's fraudulent transfer litigation against Ronald, the Trustee's efforts to enforce the Judgment against Ronald, and other litigation made necessary as a result of actions taken by Ronald. As

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set forth above, the Court found that all the arguments asserted by Ronald lacked merit. Under the circumstances, it does not offend the interests of justice for the Trustee to first pay administrative costs from the estate's community property proceeds before distributing to Ronald his *pro rata* share of such proceeds, even though such a distribution will reduce the funds that Ronald ultimately receives.

Final Ruling Granting Trustee's Motion for Authorization to Pay Administrative Expenses from Sale Proceeds [Bankr. Doc. No. 128] at 10.

The Court overruled Ronald's contention that he was entitled to receive his *pro rata* share of the estate's community property prior to payment of the costs of administration. In support of his position, Ronald asserted that he was entitled to a \$100,000 homestead exemption in the Property, based upon a Schedule C that Ronald filed on December 14, 2018. The Court found that Ronald was not entitled to assert a homestead exemption:

Section 522(l) provides:

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

Ronald is not entitled to assert an exemption on the Debtor's behalf pursuant to §522(l). First, a claim of exemption asserted under §522(l) must be filed within 44 days of the date of the petition. Bankruptcy Rule 4003(a). Here, the petition was filed on December 14, 2011. Ronald did not file a claim of exemption until approximately seven years later, well beyond the applicable deadline. Second, Ronald may not assert exemptions on the Debtor's behalf because the Debtor did file claims of exemption. The Debtor's failure to exempt the Property does not permit Ronald to supplement the Debtor's exemptions. As explained in *In re Homan*, 112 B.R. 356, 359 (B.A.P. 9th Cir. 1989): "Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative

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history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions.” *See also Kapila v. Morgan (In re Morgan)*, 286 B.R. 678, 683-84 (Bankr. E.D. Wis. 2002) (“Section 522(l) provides that a dependent of the debtor, including the debtor's spouse, whether or not actually dependent, may file a list of claimed exemptions if the debtor fails to do so. However, he did so. Since the right is his alone, she may not supplement that list, even if she disagrees with his choices.”); *In re Duncan*, 294 B.R. 339, 344 (B.A.P. 10th Cir. 2003) (citing *In re Morgan* with approval).

Final Ruling Granting Trustee’s Motion for Authorization to Pay Administrative Expenses from Sale Proceeds [Bankr. Doc. No. 128] at 12–13.

5. Ronald’s Filing of the Complaint and Ronald’s Dismissal of the Purported Cross-Complaint

On January 12, 2019, Ronald filed a *First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6)* (the "Complaint") against the Debtor. On February 15, 2019, the Court granted Ronald’s motion to dismiss the Purported Cross-Complaint. Adv. Doc. No. 150. Ronald sought the dismissal because he intended to pursue his claims against the Debtor by way of the Complaint. The allegations of the Complaint may be summarized as follows:

a. First Claim for Declaratory Relief

Ronald paid for all expenses associated with the Property, including the mortgage, taxes, insurance, and utilities. Complaint at ¶ 6. Ronald paid off the mortgage on the Property in 2015. *Id.*

Ronald was unaware of Debtor’s Chapter 7 petition because he was not scheduled as a creditor. *Id.* at ¶ 9. Debtor did not disclose the Property in her schedules or claim an exemption in the Property. *Id.* at ¶ 8.

Debtor is not entitled to any of the Sale Proceeds because she intentionally failed to schedule the Property. *Id.* at ¶ 23. Debtor was fully aware of the Property because she listed it as an asset in the pre-petition divorce proceedings, and sought to obtain an order for the sale of the Property in the divorce proceedings. *Id.* By failing to schedule the Property, Debtor forfeited any claim to the Sale Proceeds. *Id.* at ¶ 25. Ronald is entitled to a declaration that he is entitled to all of the Sale Proceeds and that Debtor is

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not entitled to any of the Sale Proceeds.

b. Second Claim for Breach of Fiduciary Duty

As Ronald's spouse, Debtor owed Ronald fiduciary duties under Cal. Fam. Code §§ 721, 1100, and 1101. Cal. Fam. Code § 721 provides in relevant part:

[I]n transactions between themselves, spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

- 1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.
- 2) Rendering upon request, true and full information of all things affecting any transaction that concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.
- 3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse that concerns the community property.

Cal. Fam. Code § 1100(c) provides:

A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

Cal. Fam. Code § 1101(a) provides:

A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-

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half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

Debtor breached her fiduciary duty to Ronald by (1) failing to obtain a waiver to sell the Property, (2) failing to disclose the Property in her schedules, and (3) failing to schedule Ronald as a creditor. *Id.* at ¶¶ 48–50. Debtor’s failure to schedule Ronald as a creditor prevented Ronald from timely claiming a homestead exemption in the Property, causing him to lose his \$100,000 homestead exemption. *Id.* at ¶ 49. Debtor’s failure to schedule the Property caused a five-year delay from the Petition Date to the date of the Property’s liquidation by the Trustee. *Id.* at ¶ 50. During this five year period, Ronald spent over \$100,000 to pay off the mortgage against the Property, and the Property appreciated by approximately \$150,000. *Id.* at ¶ 51. Debtor’s non-disclosure caused Ronald to lose his equity in the Property and the appreciation in the Property’s value. *Id.*

c. Third and Fourth Claims for Non-Dischargeability Pursuant to § 523(a)(3) and (a)(4)

By failing to schedule the Property, Debtor committed fraud in a fiduciary capacity within the meaning of § 523(a)(4). The damage caused to Ronald as a result of this fraud (the loss of his equity in the Property) is non-dischargeable. Pursuant to § 523(a)(3), the § 523(a)(4) claim is not time-barred because Debtor did not schedule Ronald as a creditor.

d. Fifth Claim for Non-Dischargeability Pursuant to § 523(a)(6)

Debtor knew that her failure to schedule the Property and to schedule Ronald as a creditor was substantially certain to injure Ronald. *Id.* at ¶ 77. The damage caused to Ronald as a result of these failures is non-dischargeable pursuant to § 523(a)(6). *Id.* at ¶ 77–78.

6. Dismissal of the First Claim for Relief and Order Authorizing the Trustee to Distribute the Sale Proceeds

On March 19, 2019, the Court granted the Trustee’s motion seeking to intervene in the Complaint. The Court dismissed the first claim for a declaration as to the distribution of the Sale Proceeds for failure to state a claim. The Court found that

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Ronald was not permitted to challenge the Trustee's proposed administration of the estate by way of the Complaint, given that such a challenge would unduly delay the administration of the estate. The Court addressed Ronald's challenge to the distribution of the Sale Proceeds in the context of a motion brought by the Trustee in the Debtor's main bankruptcy case. Overruling Ronald's objections, the Court approved the following distribution of the Sale Proceeds:

- 1) First, all remaining expenses of administration will be paid.
- 2) Second, the remaining funds will be divided in half, one half allocable to the Debtor and the other half allocable to Ronald.
- 3) Third, the Debtor's separate debts will be paid from the half allocable to the Debtor.
- 4) Fourth, Ronald's half will be divided as follows:
 - a) The Debtor's spousal support lien of \$69,186 (plus any additional interest owing as of the date of payment) will be paid in full; and
 - b) The balance will be paid to Ronald.

Final Ruling Granting Trustee's Motion to Approve Final Distribution of Sale Proceeds [Bankr. Doc. No. 152] at 19.

B. Summary of Papers Filed in Connection with the Motion to Dismiss

Debtor moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. The Motion to Dismiss initially asserted that Debtor filed her bankruptcy petition *in pro se*. After Defendant's Opposition pointed out that Debtor was represented by counsel when filing her petition, Debtor filed a Notice of Errata acknowledging the error and attributing it to counsel's inadvertence.

Debtor argues that the Complaint should be dismissed for the following reasons:

- 1) Pursuant to 28 U.S.C. § 1334(c), the Court must abstain from hearing the second claim, because it is based upon California law, is not core, could not have been commenced in federal court absent bankruptcy jurisdiction, and can be timely adjudicated in the divorce proceeding which remains pending.
- 2) In the alternative, the second claim fails under Civil Rule 12(b)(6). None of the provisions of the California Family Code applies to the facts alleged. Cal. Fam. Code § 721 applies only to "transactions between" spouses. Cal.

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Fam. Code § 1100 applies only to conveyances of community property without the consent of the other spouse. Cal. Fam. Code § 1101 defines the remedy for a breach of fiduciary duty but does not create a separate cause of action.

- 3) The third claim, under § 523(a)(3), fails because § 523(a)(3) is an exception to the statute of limitations for commencing a dischargeability action, rather than an independent claim for relief.
- 4) The fourth and fifth claims seek determinations of non-dischargeability under § 523(a)(4) and (a)(6), on the theory that Ronald was damaged by the Debtor's failure to schedule the Property. Any damage to Ronald resulting from the Debtor's failure to schedule the Property is a post-petition claim. Therefore, the fourth and fifth claims fail under Civil Rule 12(b)(6). In addition, the fourth claim fails to allege fraud with the requisite specificity, and the fifth claim does not identify an intentional tort.

Ronald makes the following arguments in opposition to the Motion to Dismiss:

- 1) The fourth and fifth claims do not seek damages for the Debtor's post-petition conduct. Debtor's actions relate back to pre-petition conduct; therefore, the damages arising from such conduct can be determined to be non-dischargeable. **[Note 5]**
- 2) The allegations under Cal. Fam. Code §§ 721, 1100, and 1101 state a claim. Debtor breached her fiduciary duty to Ronald by failing to schedule the Property, by failing to schedule Ronald as a creditor, and by failing to obtain a waiver from Ronald to sell the Property. These actions damaged Ronald by preventing him from claiming his homestead exemption and by causing him to lose his equity in the Property. Debtor has never addressed why she failed to schedule Ronald as a creditor even though she sought bankruptcy protection when the parties were in the midst of a contested divorce proceeding.
- 3) The allegations under the California Family Code are also relevant to the Complaint's claim under § 523(a)(4) for fraud while acting in a fiduciary capacity, because the California Family Code defines the fiduciary duties that the Debtor owed Ronald.

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The Debtor makes the following arguments in reply to Ronald's opposition:

- 1) Nothing in the Opposition provides any support for the fourth claim under § 523(a)(4). The damages alleged by Ronald with respect to that claim are not cognizable since they are the result of the Trustee properly administering property of the estate and this Court denying a claim of a homestead exemption to which Ronald was never entitled.
- 2) There is no merit to Ronald's contention that the allegations under § 523(a)(4) and (a)(6) state a claim because they "relate back" to pre-petition conduct. All of the conduct alleged in the Complaint occurred post-petition and therefore does not fall within the scope of § 523(a)(4) and (a)(6).

C. Summary of Papers Filed in Connection with the Motion for Sanctions

Debtor seeks sanctions against Ronald under Bankruptcy Rule 9011 for filing the Complaint. Reiterating the arguments made in the Motion to Dismiss, Debtor asserts that the Complaint lacks merit and was filed only to harass the Debtor by needlessly increasing her legal fees. Debtor seeks an award of attorneys' fees and expenses against Ronald pursuant to Bankruptcy Rule 9011(b)(1), and against Ronald's counsel pursuant to Bankruptcy Rule 9011(b)(1)–(3). On February 21, 2019, Debtor's counsel served a copy of the Motion for Sanctions, accompanied by a demand that the Complaint be withdrawn, upon Ronald's counsel.

In opposition to the Motion for Sanctions, Ronald maintains that the Complaint has merit. Ronald places particular emphasis on the Complaint's allegations regarding the Debtor's failure to schedule the Property and failure to schedule Ronald as a creditor. Ronald disputes that the Complaint was filed only to harass the Debtor, noting that he lost his homestead exemption and lost his equity in the Property as a result of the Debtor's actions.

In reply, the Debtor states that the harms Ronald allegedly suffered from the Debtor's post-petition conduct are not compensable. The Debtor argues that the liquidation of the Property was the result of the proper functioning of the Bankruptcy Code, and that Ronald's inability to claim his homestead exemption resulted from the proper application of applicable law. Consequently, Debtor argues that sanctions against Ronald and his attorney are appropriate.

II. Findings and Conclusions

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The Motion to Dismiss is Granted

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

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

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

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

The first claim was dismissed on March 19, 2019. *See* Order Granting Chapter 7 Trustee's Motion to Dismiss First Cause of Action in Ronald Peterson's First Amended Complaint, for Failure to State a Claim Upon Which Relief May be Granted Under FRCP 12(b)(6) [Adv. Doc. No. 36] and Final Ruling Granting Trustee's Motion to Dismiss [Adv. Doc. No. 31].

The second claim is dismissed because mandatory abstention applies. Title 28 U.S.C. § 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under

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title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

"Abstention can exist only when there is a parallel proceeding in state court. That is, inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may, abstain." *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997).

Because the claims under the California Family Code can be adjudicated in the parallel divorce proceeding and could not have been commenced in this Court absent the bankruptcy proceeding, the Court must abstain from hearing these claims. Ronald's argument that the Family Code claims lend support to his § 523(a)(4) claim does not defeat mandatory abstention. As discussed below, the Court is required to dismiss the § 523(a)(4) claim under Civil Rule 12(b)(6).

Even if mandatory abstention was not required, the Court would permissively abstain from hearing the second claim under 28 U.S.C. § 1334(c)(1). Section 1334(c)(1) authorizes the Court to abstain from hearing a proceeding "in the interest of justice" or "in the interest of comity with State courts or respect for State law." Ronald's claims under the Family Code have minimal impact upon the administration of the estate and are best adjudicated in the State Court, which has the expertise to hear them.

The claims under § 523(a)(3), (a)(4), and (a)(6) (claims three, four, and five) are dismissed pursuant to Civil Rule 12(b)(6). The Court notes that because Ronald was not scheduled as a creditor, the § 523(a)(4) and (a)(6) claims are not time-barred.

[Note 6] However, as set forth below, the Complaint fails because the indebtedness alleged did not arise prepetition.

Though not precisely articulated by Ronald, the Complaint's theory appears to be that the Debtor's failure to schedule either Ronald or the Property constitutes prepetition conduct. According to this theory, damages resulting from this pre-petition conduct qualify as pre-petition indebtedness.

Careful application of the Bankruptcy Code demonstrates that this theory lacks merit. Under the Bankruptcy Code, "the term 'debt' means liability on a claim." § 101(12). A "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,

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undisputed, legal, equitable, secured, or unsecured.” § 101(5A). In other words, if Ronald held a “right to payment” against the Debtor prior to the petition, he would have the ability to bring an action to except the indebtedness created by that right to payment from the Debtor’s discharge.

Here, the right to payment asserted by Ronald derives from his causes of action against the Debtor for breaching fiduciary duties and committing fraud by filing a petition containing incomplete schedules. “To determine when a cause of action accrues, and therefore whether it accrued pre-bankruptcy ..., the Court looks to state law.” *Goldstein v. Stahl (In re Goldstein)*, 526 B.R. 13, 21 (B.A.P. 9th Cir. 2015). As explained by the *Goldstein* court:

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

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

Ronald could not have commenced an action for breach of fiduciary duty and fraud against the Debtor prior to the petition. Ronald’s action against the Debtor accrued after the Debtor filed a bankruptcy petition that did not schedule either Ronald or the Property. The “last element essential to the cause of action” was the filing of the petition containing the incomplete schedules. *Howard Jarvis Taxpayers Assn. v. City of La Habra*, 25 Cal.4th 809, 815, 107 Cal.Rptr.2d 369, 23 P.3d 601 (2001). Only after the Debtor filed the incomplete petition could Ronald have begun to prosecute his claims against the Debtor arising from the nondisclosure. Because Ronald’s claims did not accrue prepetition, he is not entitled to prosecute a dischargeability action against the Debtor.

Ronald’s claim for damages on account of the loss of his homestead exemption fails for an additional reason. Even if Ronald had been scheduled, he still would not have been permitted to assert a homestead exemption in the Property. As the Court ruled previously:

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Ronald may not assert exemptions on the Debtor's behalf because the Debtor did file claims of exemption. The Debtor's failure to exempt the Property does not permit Ronald to supplement the Debtor's exemptions. As explained in *In re Homan*, 112 B.R. 356, 359 (B.A.P. 9th Cir. 1989): "Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions." *See also Kapila v. Morgan (In re Morgan)*, 286 B.R. 678, 683-84 (Bankr. E.D. Wis. 2002) ("Section 522(l) provides that a dependent of the debtor, including the debtor's spouse, whether or not actually dependent, may file a list of claimed exemptions if the debtor fails to do so. However, he did so. Since the right is his alone, she may not supplement that list, even if she disagrees with his choices."); *In re Duncan*, 294 B.R. 339, 344 (B.A.P. 10th Cir. 2003) (citing *In re Morgan* with approval).

Final Ruling Granting Trustee's Motion for Authorization to Pay Administrative Expenses from Sale Proceeds [Bankr. Doc. No. 128] at 12-13.

Ronald's contention that he suffered damages by losing the post-petition appreciation in the Property's value suffers from a similar logical defect. Had the Debtor scheduled the Property, it would have been administered by the Trustee subsequent to the filing of the petition on December 14, 2011. The end result would have been the same—the Trustee would have sold the Property, preventing Ronald from benefitting from post-petition appreciation.

The Complaint's defects could not be cured by amendment. Therefore, the dismissal is with prejudice. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (holding that "a district court may dismiss without leave where a plaintiff's proposed amendments would fail to cure the pleading deficiencies and amendment would be futile").

B. The Motion for Sanctions is Denied

Bankruptcy Rule 9011(b) provides:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge,

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information, and belief, formed after an inquiry reasonable under the circumstances—

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Violations of Bankruptcy Rule 9011(b) are punishable by monetary or nonmonetary sanctions. Bankruptcy Rule 9011(c). A Rule 9011(b) motion may be brought only if the movant provides the opposing party at least 21 days to withdraw the challenge pleading. Bankruptcy Rule 9011(c).

As a preliminary matter, the Court notes that Debtor complied with Bankruptcy Rule 9011(c)'s safe-harbor requirement.

“Rule 9011(b) incorporates a reasonableness standard which focuses on whether a competent attorney admitted to practice before the involved court could believe in like circumstances that his actions were legally and factually justified.” *In re Nakhuda*, 544 B.R. 886, 899 (B.A.P. 9th Cir. 2016), *aff'd*, 703 F. App'x 621 (9th Cir. 2017). A claim or legal contention is sanctionable if it is “both baseless and made without a reasonable and competent inquiry” or is “legally unreasonable, or without legal foundation.” *Valley Nat'l Bank of Arizona (In re Grantham Bros.)*, 922 F.2d 1438, 1442 (9th Cir. 1991).

Although the Court finds that dismissal of the Complaint with prejudice is warranted, the legal theories set forth in the Complaint were not baseless or without legal foundation. As the discussion set forth above demonstrates, the law governing whether claims accrue before or after the petition is not straightforward. In addition, given that one result of the administration of the Debtor's estate was the eviction of Ronald from the Property, which he had occupied for many years, the Court cannot

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find that Ronald filed the Complaint only for the purpose of harassing the Debtor. The Motion for Sanctions is denied.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is GRANTED and the Complaint is dismissed with prejudice. The Motion for Sanctions is DENIED. The Status Conference set for April 16, 2019 is VACATED.

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

Note 1

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

Note 2

Ronald initially filed the Purported Cross-Complaint in the main bankruptcy case rather than the adversary proceeding. After being advised of the error by the Clerk of the Court, Ronald subsequently re-filed the Purported Cross-Complaint in the adversary proceeding.

Note 3

A more detailed description of the allegations contained in the Purported Cross-Complaint is set forth in the Court's *Order Requiring Ronald Peterson to Appear and Show Cause Why the Court Should Not Construe Ronald Peterson's Purported Cross-Complaint as a Counter-Complaint, Find that the Claims Asserted in the Counter-Complaint are Compulsory, and Dismiss the Counter-Complaint as Untimely* [Adv. Doc. No. 69] (the "Order to Show Cause").

Note 4

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The Court made identical findings with respect to Ronald's objection to the Proof of Claim filed by Shaco, Inc. See Final Ruling Overruling Objection to Claim Number 1 [Bankr. Doc. No. 82] at 4–5.

Note 5

Ronald does not specify the pre-petition conduct that the fourth and fifth claims relate back to.

Note 6

Creditors who received notice of the petition are required to file a dischargeability complaint within sixty days of the meeting of creditors. Bankruptcy Rule 4007(c). If creditors fail to timely file a dischargeability complaint, their indebtedness is automatically discharged, even if it falls within one of the categories of debt that is non-dischargeable. This result follows from the plain language of §523(c)(1), which provides:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of a creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

See also Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin), 179 B.R. 913, 923-24 (Bankr. E.D. Cal. 1995) (“[I]f the debt to [the creditor] Fidelity had been listed or scheduled or if Fidelity had notice of Franklin’s bankruptcy, it would have needed to act promptly to request a determination that the debt is nondischargeable ... or else the debt would have been discharged”). A scheduled creditor who does not timely file a dischargeability complaint and thereafter seeks to collect upon the creditor’s prepetition debt acts in violation of the discharge injunction.

Section 523(c)(1)’s preambular phrase “[e]xcept as provided in subsection (a)(3)(B) of this section” creates an important exception to the sixty day deadline. Section 523(a)(3)(B) provides that indebtedness of the kind specified in §523(a)(2), (a)(4), and (a)(6) is not discharged if the creditor was not scheduled and did not have notice or actual knowledge of the bankruptcy petition. *Franklin*, 179 B.R. at 924. Such unscheduled creditors are not required to file a dischargeability complaint within sixty days of the meeting of creditors, and instead may file a dischargeability complaint “at any time.” Bankruptcy Rule 4007(b).

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Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Represented By
Charity J Manee

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:11-60846 Anne Lan Peterson

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Adv#: 2:19-01004 Peterson v. Peterson

#200.10 HearingRE: [38] Motion For Sanctions/Disgorgement Notice Of Motion And Motion For Sanctions Against Ronald Peterson And His Counsel Pursuant To Bankruptcy Rule 9011 Request For Judicial Notice And Declaration Of Charity J. Manee In Support Thereof

Docket 38

Tentative Ruling:

4/9/2019

See Cal. No. 200, above, incorporated in full by reference.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Represented By
Charity J Manee

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#201.00 Hearing re [69] Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization

Docket 0

Tentative Ruling:

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The Court will require the Debtor to make a few minor amendments to the Disclosure Statement, as discussed below. Otherwise, the Court finds that the Disclosure Statement contains adequate information.

Pleadings Filed and Reviewed

1. Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 69] (the "Disclosure Statement")
2. Debtor's Chapter 11 Plan of Reorganization [Doc. No. 70] (the "Plan")
3. Notice of Hearing on Adequacy of Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 71]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns three residential real properties: (i) 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property"); (ii) 5935 Playa Vista Dr., #414, Playa Vista, CA 90094 (the "Playa Vista Property"); and (iii) 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties"). The Debtor filed this case to address several defaulted loans secured by liens on the Properties and to reorganize its affairs.

The Debtor seeks an order approving the adequacy of its Disclosure Statement.

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The Disclosure Statement explains the reasons for filing, describes the Debtor's assets and their values, and provides a summary of significant post-petition events. The Disclosure Statement describes the Debtor's proposed plan of reorganization, which will be funded by additional income generated from increased rents from the Virgil and Playa Vista Properties. The Debtor proposes the following classification scheme and treatment:

- **Class 1:** Secured claim of Seterus, Inc., as the authorized sub-servicer for Federal National Mortgage Association ("Seterus"). Seterus holds the first priority lien against the Virgil Property in the amount of \$882,107. The Debtor proposes to pay Seterus's claim in full, with 5.5% interest amortized over 30 years. Seterus will be repaid in two phases. The Debtor will make 120 monthly payments to Seterus in the amount of \$5,009. The Debtor will also deposit \$982 a month into a tax impound account on account of this claim. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Seterus's claim. Seterus's claim is impaired and it is entitled to vote on the Plan.
- **Class 2:** Secured claim of Errol Gordon ("Gordon"). Gordon holds the second priority lien against the Virgil Property in the amount of \$50,000. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$209. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.
- **Class 3:** Secured claim of Gordon. Gordon also holds the second priority lien against the Senford Property in the amount of \$300,701. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon's claim will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$1,257. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.
- **Class 4:** Secured claim of Los Angeles County Treasurer and Tax Collector (the "LACTTC"). LACTTC holds a property tax lien against the Senford Property in the amount of \$97,939. The Debtor proposes to pay LACTTC's

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claim in full, with 18 interest, plus redemption penalty interest and any other fees, costs, or charges LACTTC is entitled to. The Debtor will make 60 monthly payments to LACTTC in the amount of \$2,487. LACTTC's claim is impaired and it is entitled to vote on the Plan.

- **Class 5:** Secured claim of Mr. Cooper/Nationstar ("Mr. Cooper"). Mr. Cooper holds the first priority lien against the Playa Vista Property in the amount of \$857,177. The Debtor proposes to pay Mr. Cooper's claim in accordance with the applicable loan obligations. As such, Mr. Cooper's claim is unimpaired and Mr. Cooper is not entitled to vote on the Plan.
- **Class 6:** Secured claim of Playa Vista Parks HOA ("PVP"). PVP holds an HOA lien against the Playa Vista Property in the amount of \$70,080. The Debtor proposes to pay PVP's claim in full, at 4% interest amortized over 40 years. PVP's claim will be repaid in two phases. The Debtor will make 120 monthly payments to PVP in the amount of \$323. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy PVP's claim. PVP's claim is impaired and it is entitled to vote on the Plan.
- **Class 7:** Secured claim of Villa d'Este HOA ("Villa"). Villa holds an HOA lien against the Playa Property in the amount of \$31,855. The Debtor proposes to pay Villa's claim in full, with 4% interest amortized over 40 years. The Debtor will make 120 monthly payments to Villa in the amount of \$323. Villa's claim is impaired and it is entitled to vote on the Plan.
- **Class 8:** Priority unsecured claims. The Debtor does not believe any priority unsecured claims exist.
- **Class 9:** General unsecured claims. The Debtor estimates that general unsecured claims total approximately \$723. These claims will be paid in full by the first day of the first month following the Effective Date. The Debtor submits that this proposed treatment renders general unsecured claims unimpaired and, accordingly, they would be deemed to accept the Plan and not entitled to vote.
- **Class 10:** Interest holders. Debtor's owners will retain their ownership interest in the Debtor.

The Debtor also proposes to pay the Franchise Tax Board's priority claim within 36 months by making monthly payments of \$77. Resnik Hayes Moradi has consented to Debtor's proposal to repay its administrative claim, in an amount approved by this

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Court, by making monthly payments in the amount of \$1,000 until its claim is satisfied.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information

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United International Mortgage Solutions, Inc.

Chapter 11

relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Subject to the minor amendments discussed below, the Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement describes (1) the factors precipitating the Chapter 11 filing, (2) significant events that occurred during the Chapter 11 case, (3) the classification structure of the Plan, (4) a disclaimer, (5) risk factors, and (6) the means for execution of the Plan.

However, the Court will require the Debtor to file an amended disclosure statement and plan by no later than **April 24, 2019** to address the following two issues:

First, the Debtor proposes an Effective Date that is "the first business day that is fourteen (14) calendar days after the entry of the order confirming the Plan, with payment beginning by the first day of the following month." Disclosure Statement, p.5:18-20. This language is problematic because certain confirmation requirements mandate that effective date payments occur on the Effective Date. For example, for the Court to determine that Class 9 general unsecured claims are unimpaired, the Debtor must pay all claims in full on the Effective Date, rather than the proposed "first day of the month following the Effective Date." Therefore, the Debtor is directed to amend the language so that payments begin on the Effective Date.

Second, the Court notes that the Debtor’s financial projections in Exhibit B state that they are for a period of "5 years," but only contain 12 months of projections. The Debtor is directed to file an amended Exhibit B with the full 5-year projections.

Although the following are plan confirmation issues, the Debtor should also be prepared to present further evidence in support its confirmation brief regarding the feasibility of its proposed Plan. In its current form, the Plan proposes payment of

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certain obligations for months two through five, but the Debtor's projections set forth in Exhibit B to the Disclosure Statement reflect negative net monthly income for those months. The Court also notes the Debtor's proposed Plan will be funded, in part, from contributions from Sandra McBeth. As evidence of Ms. McBeth's financial ability to make such contributions, the Debtor attached Exhibit E, which purports to be copies of bank statements showing deposits and income from her employment as a real estate consultant. *See* Declaration of Sandra McBeth & Exhibit E. However, the bank accounts belong to Playa Vista Realty Group, Inc., and without more information about whether the statements capture all of Ms. McBeth's monthly income and expenses, the Court does not believe Exhibit E is sufficient evidence of Ms. McBeth's financial ability to fund the proposed Plan.

The following dates will apply:

- 1) A hearing will be held on the confirmation of the Debtor's First Amended Chapter 11 Plan (the "Plan") on **July 17, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the First Amended Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **April 26, 2019**. (As ordered above, the First Amended Disclosure Statement containing minor amendments described above must be filed by **April 24, 2019**.)
- 3) **June 14, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.
- 4) **June 26, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **July 3, 2019** (the "Objection Date"), is fixed as the last day for filing and

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serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.

- 6) **July 10, 2019** is fixed as the last day on which the Debtor may file and serve its reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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10:00 AM

2:19-11274 Arthur Nelson Capone

Chapter 7

#1.00 Hearing
RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 TOYOTA COROLLA .

Docket 12

Tentative Ruling:

4/11/2019

Tentative Ruling:

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

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

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CONT... Arthur Nelson Capone

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Upload system within 7 days of the hearing.

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

Party Information

Debtor(s):

Arthur Nelson Capone

Represented By
Peter M Lively

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 HearingRE: [1750] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Self Insured with Marillac, file number 20177643066 .

Docket 1750

Tentative Ruling:

4/11/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Vincent Medical Center and Elissa O'Halloran Granting Motions for Relief from the Automatic Stay* [Doc. No. 2109] (the "Stipulation") is APPROVED. Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

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#3.00 HearingRE: [1752] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Self Insured with Marillac, file number 20177643066 .

Docket 1752

Tentative Ruling:

4/11/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 HearingRE: [1840] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Yolanda Mancilla v Saint Vincent Medical Center, BC722905 .

Docket 1840

Tentative Ruling:

4/11/2019

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **June 15, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 1840]
- 2) Debtors' Response and Opposition to Motion for Relief from the Automatic Stay Filed on Behalf of Yolanda Mancilla [Doc. No. 1984]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Yolanda Mancilla [Doc. No. 1978]
- 4) No Reply is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Yolanda Mancilla, by and through her successor-in-interest, Fernanda Torres (the "Movant") seeks stay-relief, pursuant to §362(d)(1), to permit Movant to prosecute a wrongful death action (the "State Court Action") against the Debtors. Movant has not agreed to limit her recovery to applicable insurance. Although the State Court Action was filed on September 24, 2018, subsequent to the Petition Date, Movant does not seek retroactive annulment of the automatic stay.

In opposition to the Motion, Debtors state that they would consider stipulating to

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stay-relief provided Movant agreed to seek recovery only from insurance and waived any deficiency claim. Because Movant has not agreed to limit her recovery in this manner, Debtors contend that the Motion should be denied without prejudice. Debtors assert that being required to litigate the State Court Action would distract attention from pressing issues, such as the sale of the remaining hospitals. In the event the Court is inclined to grant stay-relief, Debtors request that such relief not take effect until June 15, 2019.

For the same reasons, the Official Committee of Unsecured Creditors asserts that the Motion should be denied without prejudice.

No Reply in support of the Motion is on file.

II. Findings and Conclusions

The parties have not addressed a critical issue—the fact that Movant filed the State Court Action subsequent to the Petition Date without obtaining stay-relief. Unless the Court retroactively annuls the automatic stay, the filing of the State Court Action is void. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) (holding that "violations of the automatic stay are void, not voidable").

"[T]he proper standard for determining 'cause' to annul the automatic stay retroactively is a 'balancing of the equities' test." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003). In weighing the equities, the general trend has been to focus on two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

Movant has not requested retroactive annulment of the automatic stay. That alone is sufficient reason for the Court to decline to grant such relief. In addition, there is no evidence before the Court as to either of the two factors set forth in *In re Fjeldsted*. The Court will not retroactively annul the stay. This means that the filing of the State Court action is void.

The Court finds that stay-relief is appropriate. To enable the Debtors to focus upon the sale of their remaining hospitals, such relief shall not take effect until **June 15, 2019**.

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to

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continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate (factor two). *Curtis*, 40 B.R. at 806. The *Curtis* court held that "[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Id.*

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Because Movant has not agreed to limit her recovery to insurance, granting stay-relief at this time would require the Debtors to defend against the State Court Action. Although it would certainly be possible for the Debtors to mount a defense at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors' professionals from the sale of their remaining hospitals. A hearing to approve the sale of the remaining hospitals is set for April 17, 2019 (the "Sale Hearing"). To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the Sale Hearing. Even after the Sale Hearing has been completed, Debtors will be required to devote substantial attention to issues arising in connection with the California Attorney General's review of the sale.

In view of the findings set forth above, *Curtis* factors two, five, seven, and eleven weigh against granting stay-relief at this time. Although the relevant *Curtis* factors do not warrant stay-relief now, stay-relief will be warranted as of **June 15, 2019**.

Granting stay-relief now would interfere with the bankruptcy case by distracting the Debtors' professionals from other pressing matters (the second *Curtis* factor). With respect to factor five, the damages sought in the State Court Action are substantial; Movant has not agreed to limit recovery to applicable insurance; and it is therefore not known whether available insurance proceeds will be sufficient to cover any judgment Movant may obtain. Factor five weighs against granting immediate stay-relief. The litigation's interference with the case has the potential to reduce creditor recoveries; therefore, factor seven weighs against granting immediate stay-relief. The State Court Action has not reached the trial stage, so factor eleven also weighs against granting immediate stay-relief.

Factor twelve—the balance of the hurt—is neutral. As discussed, granting immediate stay-relief will harm the Debtors by distracting the Debtors' professionals from other pressing matters. On the other hand, Movant is prejudiced by the inability to pursue legal redress.

To the extent that they apply, the remaining *Curtis* factors weigh in favor of immediate stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is the tribunal best suited to hear the Movant's claims (factor three); and lifting the stay would result in a more expeditious determination of the State Court Action (factor ten). Nonetheless, these factors are outweighed by the harm that immediate stay-relief would impose upon the Debtors.

Having considered the applicable *Curtis* factors, the Court finds that Movant is entitled to stay-relief, effective as of **June 15, 2019**. This result gives the Debtors

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some breathing space to achieve their objectives, while at the same time delaying Movant's ability to proceed with the State Court Action by only two months.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **June 15, 2019**. Movant shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

[Note 1]

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

Note 1

To ensure that the Debtors have the opportunity to review Movant's proposed order as to form, Movant shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

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Sam J Alberts
Shirley Cho
Patrick Maxcy

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10:00 AM

2:19-12426 Victor Villasenor

Chapter 7

#5.00 Hearing
RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 Honda Fit, VIN JHMGE8H32CC001021 . (Wang, Jennifer)

Docket 9

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON
4-11-19**

Tentative Ruling:

Party Information

Debtor(s):

Victor Villasenor

Represented By
Francis Guilardi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:19-12766 Oscar Gomez

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 11158 Lynrose St., Arcadia, CA 91006 with proof of service. (Daniels, Luke)

Docket 9

Tentative Ruling:

4/11/2019

Tentative Ruling:

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

The automatic stay does not apply to any action taken by Movant to evict the Debtor from the Property. Movant obtained an unlawful detainer judgment against the Debtor on February 5, 2019, and obtained a writ of possession for the Property on February 13, 2019. Debtor filed a voluntary Chapter 7 petition on March 14, 2019. "[U]nder California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." In re Perl, 811 F.3d 1120, 1127–28 (9th Cir. 2016). Because the Debtor's interest in the Property was extinguished pre-petition, the Property is not property of the estate and the automatic stay does not apply. The unlawful detainer judgment divested the Debtor "of all legal and equitable possessory rights that would otherwise be protected by the automatic stay." Id. at 1130.

Movant may enforce its remedies to obtain possession of the property in accordance with applicable state law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11

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CONT... Oscar Gomez
U.S.C. § 501.

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The 14-day stay prescribed by FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The Court notes that Debtor's case was dismissed on April 1, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

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

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

Party Information

Debtor(s):

Oscar Gomez

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:19-13304 Juan F Bernal

Chapter 7

#7.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 648 Robin Glen Drive, Glendale, CA 91202 . (Lisitsa, Yevgeniya)

Docket 7

Tentative Ruling:

4/11/2019

Tentative Ruling:

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

In the absence of any persuasive opposition, the Court is prepared to find that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Leonid Polishuk in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All

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other relief is denied.

Chapter 7

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

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

Party Information

Debtor(s):

Juan F Bernal

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:08-10666 Lars Erik Hanson

Chapter 7

Adv#: 2:08-01391 Blue Cross and Blue Sheild of Alabama et al v. Hanson et al

#1.00 Status Hearing: [1] Adversary case 2:08-ap-01391. Complaint by Blue Cross and Blue Sheild of Alabama et al against Lars Erik Hanson. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Shemano, David) ---

fr. 6-19-08; 7-17-08; fr. 12-18-08; 6-18-09; 2-17-2010; 6-17-10; 12-9-10;
6-22-11, 12-15-11, 1-5-12, 7-5-12; 2-7-13; 8-15-13; 9-5-13; 3-20-14; 9-25-14;
10-2-14; 4-14-15; 10-13-15; 4-12-16; 10-11-16; 4-11-17; 10-17-17; 4-17-18;
10-16-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-15-19 AT 10:00 A.M.**

Tentative Ruling:

12/16/2009

Hearing continued per stipulation.

Party Information

Debtor(s):

Lars Erik Hanson

Represented By
Sam X J Wu

Defendant(s):

Lars Erik Hanson

Pro Se

JAMES L BROWN

Pro Se

Sam X J Wu

Pro Se

Plaintiff(s):

Blue Cross and Blue Sheild of

Represented By
David B Shemano
Marvin Wexler

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Lars Erik Hanson

Chapter 7

Trustee(s):

James L Brown

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#2.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 1

***** VACATED *** REASON: FIRST AMENDED COMPLAINT FILED
ON 1-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson	Pro Se
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Defendant(s):

Anne Lan Peterson	Pro Se
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Plaintiff(s):

Ronald Peterson	Pro Se
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Trustee(s):

Brad D Krasnoff (TR)	Represented By Eric P Israel Zev Shechtman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#3.00 Status Hearing
RE: [10] Amended Complaint Plaintiff's First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) To Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6), with Proof of Service by David Brian Lally on behalf of Ronald Peterson against Anne Lan Peterson. (RE: related document(s)1 Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 10

***** VACATED *** REASON: PER 4-10-19 HEARING**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Pro Se

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01086 Goodrich v. Noble U, a California corporation

#4.00 Status Hearing re Consummation of the Settlement
RE: [1] Adversary case 2:17-ap-01086. Complaint by David M. Goodrich against
Noble U, a California corporation.

fr: 10-16-18

Docket 1

***** VACATED *** REASON: DISMISSED 11-15-18**

Tentative Ruling:

10/15/2018

This hearing is vacated and no appearances are required. The Court has approved a settlement of this action. Pursuant to the settlement, Defendant commenced making payments to the Chapter 7 Trustee (the "Trustee") on October 1, 2017, and will continue making payments through and including September 1, 2019. Having reviewed the Status Report submitted by the Trustee, the Court finds that the Defendant is performing under the settlement.

A status conference to monitor consummation of the settlement will be held on **April 16, 2019, at 10:00 a.m.** The Court will prepare and enter an order setting the continued status conference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Noble U, a California corporation

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18; 2-12-19; 3-12-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-26-19**

Tentative Ruling:

2/11/2019

The motion seeking approval of the settlement agreement reached in this action (the "Rule 9019 Motion") has been filed. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **March 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 2) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 37] entered on June 19, 2018 are VACATED.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

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

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Hakop Azatian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#6.00 Status Hearing

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

fr. 1-15-19; 4-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 5-14-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Lempa Roofing Inc

Chapter 7

The Home Depot, Inc. Pro Se

Home Depot Credit Services Pro Se

Home Depot U.S.A., Inc. Pro Se

Plaintiff(s):

Rosendo Gonzalez Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR) Represented By
Anthony A Friedman

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01019 Timothy J. Yoo, Chapter 7 Trustee v. IDrive Interactive, LLC

- #7.00** Status Hearing RE: [1] Adversary case 2:19-ap-01019. Complaint by Timothy J. Yoo, Chapter 7 Trustee against IDrive Interactive, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IDrive Interactive, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01020 Timothy J. Yoo, Chapter 7 Trustee v. Texas Email Company, LLC

#8.00 Status Hearing RE: [1] Adversary case 2:19-ap-01020. Complaint by Timothy J. Yoo, Chapter 7 Trustee against Texas Email Company, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

Tentative Ruling:

4/15/2019

The Clerk of the Court entered Defendant's default on April 10, 2019. Doc. No. 11. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a Motion for Default Judgment by no later than **May 31, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference is set for **July 16, 2019, at 10:00 a.m.** Plaintiff shall file a Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

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

Party Information

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

Texas Email Company, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:17-19286 Carnaval de Autos

Chapter 7

Adv#: 2:18-01455 Goodrich v. Premier Auto Credit, a California corporation et a

#9.00 Status Hearing RE: [1] Adversary case 2:18-ap-01455. Complaint by David M Goodrich against Premier Auto Credit, a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Nachimson, Benjamin)

Docket 1

Tentative Ruling:

4/15/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, the litigation deadlines previously ordered shall be continued by approximately sixty days. The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **7/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT...

Carnaval de Autos

Chapter 7

- for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT...

Carnaval de Autos

Chapter 7

to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

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

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

Party Information

Debtor(s):

Carnaval de Autos

Represented By
Eric Bensamochan

Defendant(s):

Premier Auto Credit, a California

Pro Se

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Carnaval de Autos
DOES 1-10 inclusive

Pro Se

Chapter 7

Plaintiff(s):

David M Goodrich

Represented By
Benjamin Nachimson

Trustee(s):

David M Goodrich (TR)

Represented By
Benjamin Nachimson

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#10.00 Status Hearing
RE: [25] Counterclaim by Carolyn A Dye, Chapter 7 Trustee on behalf of the
bankruptcy estate of Fatemah V Mahdavi against James De Arruda

Docket 25

Tentative Ruling:

4/15/2019

The procedural history of this action is set forth in the Court's final ruling issued in connection with the Status Conference conducted on January 15, 2019. Doc. No. 36. No significant developments in the case have occurred since the prior Status Conference. The parties have advised the Court that they have scheduled mediation for April 19, 2019. Doc. No. 42.

The litigation deadlines set forth in the *Order (1) Setting Litigation Deadlines and (2) Setting Continued Status Conference for April 16, 2019, at 10:00 a.m.* [Doc. No. 37] shall continue to apply. Absent further order of the Court, no further Status Conferences shall be held.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Fatemeh V. Mahdavi

Chapter 7

Defendant(s):

Ali Reza Mahdavi	Pro Se
Fatemeh V. Mahdavi	Pro Se
DOES 1 through 10, inclusive	Pro Se
Carolyn A Dye, Chapter 7 Trustee on	Pro Se

Plaintiff(s):

James De Arruda	Represented By Peter W Lianides Joseph Angelo J. Michael Echevarria
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Trustee(s):

Carolyn A Dye (TR)	Represented By Eric P Israel Michael G D'Alba
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#11.00 Status Hearing

RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission
4) Quiet Title by Peter W Lianides on behalf of James De Arruda against
Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi

fr: 1-15-19

Docket 14

Tentative Ruling:

4/15/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Fatemeh V. Mahdavi

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01059 OBI Acquisition, LLC, a Delaware limited liability v. Stepper et al

#12.00 Status HearingRE: [1] Adversary case 2:19-ap-01059. Notice of Removal to United States Bankruptcy Court of Litigation Pending in Los Angeles County Superior Court filed by David M. Goodrich, Chapter 7 Trustee for OBI Probiotic Soda, LLC by OBI Acquisition, LLC, a Delaware limited liability company. (Attachments: # 1 Appendix Adversary Cover Sheet # 2 Appendix Notice of Status Conference on Removal of Action) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica) WARNING: See entry [2] for corrective action. Attorney to file copy of State Court complaint. Modified on 3/4/2019 (Lomeli, Lydia R.).

Docket 1

Tentative Ruling:

4/15/2019

On July 12, 2018 (the "Petition Date"), a Chapter 7 involuntary petition was commenced against OBI Probiotic Soda, LLC (the "Debtor"). An order for relief was entered on September 20, 2018 and a Chapter 7 Trustee (the "Trustee") was appointed.

On March 27, 2018, OBI Acquisition, LLC ("OBI Acquisition") filed a *Complaint for (1) Intentional Interference with Prospective Economic Relations, (2) Negligent Interference with Prospective Economic Relations, (3) Breach of Fiduciary Duty, and (4) Promissory Fraud* (the "Complaint") in the Los Angeles Superior Court (the "State Court") against Daniel Stepper ("Stepper"), Dino Sarti ("Sarti"), and LA Libations, LLC ("LA Libations"). OBI Acquisition brought the Complaint derivatively for the benefit of the Debtor, and named the Debtor as a nominal defendant solely in a derivative capacity.

On May 18, 2018, Stepper, Sarti, and LA Libations filed a Cross-Complaint against OBI Acquisition and various other parties (the "Stepper Cross-Complaint"). On July 3, 2018, Paul Phillips and various other parties filed a Cross-Complaint against OBI Acquisition (the "Phillips Cross-Complaint").

On February 28, 2019, the Trustee removed the action to the Bankruptcy Court. The Trustee asserts that the Complaint's derivative claims and the Stepper Cross-

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CONT... OBI Probiotic Soda LLC

Chapter 7

Complaint's claim for declaratory relief belong to the estate. The Trustee states that he intends to commence a separate adversary proceeding that will clarify which claims belong to the estate and which do not. The Trustee anticipates that once the additional complaint is on file, the two adversary proceedings can be consolidated or otherwise streamlined to promote judicial economy.

The Court finds that this action should not proceed until the Trustee has clarified his position with respect to which claims belong to the estate and which claims do not. By no later than **May 14, 2019**, the Trustee shall file the separate complaint referenced in the Status Report. A Status Conference pertaining to both this action and the separate complaint shall be held on **July 16, 2019, at 10:00 a.m.**, at which time the Court will determine whether consolidation of the proceedings is appropriate.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Daniel Stepper	Pro Se
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Dino Sarti	Pro Se
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L.A. Libations, LLC, a California	Pro Se
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Does 1-100 Inclusive	Pro Se
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OBI Probiotic Soda, LLC, a	Pro Se
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CONT... OBI Probiotic Soda LLC

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Plaintiff(s):

OBI Acquisition, LLC, a Delaware

Represented By
Kevin M Yopp

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

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2:18-18233 Jessie O Unite

Chapter 7

Adv#: 2:18-01325 South Bay Credit Union v. Unite

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01325. Complaint by South Bay Credit Union against Jessie Orden Unite. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Simon, A. Lysa)

FR. 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

Hearing VACATED. The Court has entered default judgment in Plaintiff's favor.

Party Information

Debtor(s):

Jessie O Unite

Represented By
Edwin A Barnum

Defendant(s):

Jessie Orden Unite

Pro Se

Plaintiff(s):

South Bay Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Wesley H Avery (TR)

Represented By
Edwin A Barnum

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2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01425 Cortes v. LeClair

#14.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01425. Complaint by Alvaro Cortes against Jeremy Wyatt LeClair. false pretenses, false representation, actual fraud),(11 (Recovery of money/property - 542 turnover of property)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Weissman, I)

fr. 3-12-19

Docket 1

Tentative Ruling:

4/15/2019

This Status Conference is CONTINUED to **May 15, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on Defendant's motion to set aside the underlying State Court Judgment. The parties are not required to submit an additional Status Report.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

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2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#15.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lin, Zi)

fr: 2-12-19

Docket 1

Tentative Ruling:

4/15/2019

The Court has entered an order continuing this Status Conference to **April 17, 2019, at 11:00 a.m.**, to take place concurrently with the hearing on Plaintiff's *Motion for Leave to Amend Adversary Complaint* [Doc. No. 21].

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Jenny Melendez, an individual

Pro Se

Clara E Melendez, an individual

Pro Se

DOES 1-20

Pro Se

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CONT... Jenny Melendez

Chapter 7

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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2:19-10519 Edwin Wellington Terry

Chapter 7

#16.00 Show Cause Hearing RE: [14] Notice to creditors re 13 Order Requiring Petitioning Creditor To Appear And Show Cause Why This Involuntary Petition Should Not Be Dismissed. April 16, 2019, at 10:00 a.m.(BNC-PDF) (Lomeli, Lydia R.)

Docket 14

Tentative Ruling:

4/15/2019

For the reasons set forth below, the Second Involuntary Petition is DISMISSED, and the Petitioning Creditor is enjoined from filing a further involuntary petition against the Alleged Debtor for a period of one year.

Pleadings Filed and Reviewed:

- 1) Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not be Dismissed [Doc. No. 13] (the "OSC")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. Nos. 17-16]
 - b) Certificate of Service Upon Knuckles, Komosinski & Manfro, LLP [Doc. No. 18]
- 2) Declaration by Petitioning Creditor Marshall Broadway [Doc. No. 19]
- 3) Notice of Opposition by Alleged Debtor [Doc. No. 20]

I. Facts and Summary of Pleadings

On July 20, 2018, Petro-Token Management LLC (the "Petitioning Creditor") filed an *Involuntary Petition Against an Individual* (the "First Involuntary Petition") against Edwin Wellington Terry (the "Alleged Debtor"), commencing Case No. 2:18-bk-18329-ER (the "First Involuntary Case"). *See* Doc. No. 1, Case No. 2:18-bk-18329-ER. On October 23, 2018, the Court issued an order requiring the Petitioning Creditor to show cause why the First Involuntary Case should not be dismissed (the "Order to Show Cause"). *See* Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not Be Dismissed [Doc. No. 10-1, Case No. 2:18-bk-18329-ER]. Petitioning Creditor failed to respond to the Order to Show Cause.

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CONT... Edwin Wellington Terry

Chapter 7

On December 27, 2018, the Court dismissed the First Involuntary Case as a result of the following deficiencies:

- 1) The Petitioning Creditor, a business entity, had failed to retain counsel and was thus not authorized to appear.
- 2) The allegations of the First Involuntary Petition did not establish that the Petitioning Creditor was entitled to an order for relief against the Alleged Debtor. The First Involuntary Petition alleged indebtedness of \$12,500. Pursuant to § 303(b)(2), the Petitioning Creditor was required to hold a noncontingent, undisputed claim of at least \$15,775 to be entitled to relief.
- 3) Marshall Broadway, the Petitioning Creditor's authorized representative, had failed to comply with the Court's order requiring him to submit a declaration establishing that the Petitioning Creditor was a valid corporate entity.

See Final Ruling Dismissing Involuntary Petition at 2–3 [Doc. No. 16, Case No. 2:18-bk-18329-ER].

On January 18, 2019, Petitioning Creditor filed an *Involuntary Petition Against an Individual* (the "Second Involuntary Petition") against the Alleged Debtor, commencing Case No. 2:18-bk-10519-ER (the "Second Involuntary Case"). Doc. No. 1, Case No. 2:19-bk-10519-ER. On February 28, 2019, the Second Involuntary Case was reassigned from the Hon. Robert Kwan to the undersigned Judge, pursuant to General Order 11-01. Doc. No. 8, Case No. 2:19-bk-10519-ER.

The Second Involuntary Petition is signed by Marshall Broadway, in his capacity as the Petitioning Creditor's authorized representative. Petitioning Creditor filed Articles of Organization with the California Secretary of State on November 20, 2018. According to the Articles of Organization, Mr. Broadway is the Petitioning Creditor's organizer.

It is well established that a corporation, trust, limited liability company, or other type of business entity "may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). This requirement is reiterated in LBR 9011-2(a).

The proposed form of Summons appended to the Second Involuntary Petition states that the Petitioning Creditor is represented by Knuckles, Komosinski & Manfro, LLP ("Knuckles"), a law firm with offices in New Jersey and New York. However, the Second Involuntary Petition is not actually signed by an attorney affiliated with Knuckles.

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On March 8, 2019, the Court issued an *Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not be Dismissed* (the "Order to Show Cause"). Doc. No. 13, Case No. 2:19-bk-10519-ER. The Order to Show Cause provided in relevant part:

Bankruptcy Rule 9011 requires that "[e]very petition, pleading, written motion, and other paper ... shall be signed by at least one attorney of record in the attorney's individual name." Because the Second Involuntary Petition was not signed by an attorney affiliated with Knuckles, the Court cannot verify that Knuckles actually represents the Petitioning Creditor. The Court notes that Knuckles' practice is focused upon representing clients located in New York, New Jersey, and Connecticut. It does not appear that any of Knuckles' attorneys are admitted to practice in California. This casts doubt upon whether Knuckles represents the Petitioning Creditor....

If the Petitioning Creditor cannot establish that it is represented by Knuckles, the Court is prepared to dismiss the Second Involuntary Petition. Unless represented by counsel, Petitioning Creditor is not authorized to appear. If the Petitioning Creditor is not authorized to appear, the Court cannot consider the Petitioning Creditor's allegation that it holds a claim against the Alleged Debtor. In such a case, there would be no evidence before the Court establishing the Petitioning Creditor's entitlement to an order for relief, and the Court would be required to dismiss the Second Involuntary Petition.

Order to Show Cause at 5.

The OSC further advised the Petitioning Creditor that the Court was prepared to find that the Second Involuntary Petition was filed in bad faith:

The Petitioning Creditor's failure to respond to the Order to Show Cause issued in the First Involuntary Case, followed shortly thereafter by the filing of the substantially identical Second Involuntary Petition, constitutes an abuse of the bankruptcy process. In the event that the Petitioning Creditor fails to establish the legitimacy of the indebtedness alleged in the Second Involuntary Petition, the Court is prepared to find that the Second Involuntary Petition was filed in bad faith. The Court is further prepared to enjoin Petitioning Creditor from filing an involuntary petition against the Alleged Debtor for a period of one year, pursuant to § 105 and its inherent authority. Where a debtor files a

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petition in bad faith, the Court may impose a bar against re-filing. *In re Mitchell*, 357 B.R. 142, 156 (Bankr. C.D. Cal. 2006). A re-filing bar is likewise appropriate where a Petitioning Creditor files a petition in bad faith.

Order to Show Cause at 5–6.

In response to the Order to Show Cause, Mr. Broadway filed a declaration stating that on October 20, 2017, Petitioning Creditor entered into a contract with the Alleged Debtor, under which Petitioning Creditor would produce a cryptography coin for the Alleged Debtor for a fee of \$15,000 (the "Contract"). Mr. Broadway states that the Alleged Debtor paid \$2,500 but failed to pay the remainder of the balance.

Mr. Broadway states that Knuckles does not represent the Petitioning Creditor and that he does not know who Knuckles is.

The Alleged Debtor filed an Opposition in which he acknowledges entering into the Contract. The Alleged Debtor asserts that the Petitioning Creditor has failed to perform under the terms of the Contract.

II. Findings and Conclusions

The Second Involuntary Petition is DISMISSED, and Petitioning Creditor is enjoined from filing a further involuntary petition against the Alleged Debtor for a period of one year.

The Court finds that the Second Involuntary Petition was filed in bad faith. The Court maintains its finding, set forth in the OSC, that the "Petitioning Creditor's failure to respond to the Order to Show Cause issued in the First Involuntary Case, followed shortly thereafter by the filing of the substantially identical Second Involuntary Petition, constitutes an abuse of the bankruptcy process." Order to Show Cause at 5. Among the reasons supporting the dismissal of the First Involuntary Petition was the Petitioning Creditors' lack of representation by counsel. In the *Final Ruling Dismissing Involuntary Petition* [Doc. No. 16, Case No. 2:18-bk-18329-ER], Petitioning Creditor was informed that its lack of representation by counsel was one of the factors supporting dismissal. Nonetheless, shortly after the dismissal of the First Involuntary Petition, Petitioning Creditor filed the Second Involuntary Petition, again without counsel. Worse still, the Second Involuntary Petition falsely represented that the Petitioning Creditor was represented by the firm Knuckles. Mr. Broadway, the Petitioning Creditor's organizer, now admits that Petitioning Creditor is not represented by Knuckles and that he has no idea who Knuckles is.

In addition, Petitioning Creditor is not entitled to an order for relief, because the

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indebtedness at issue is in bona fide dispute. The Alleged Debtor contends that Petitioning Creditor has failed to perform under the Contract giving rise to the indebtedness.

The Court will prepare and enter an order dismissing the Second Involuntary Petition and enjoining the Petitioning Creditor from filing a further involuntary petition against the Alleged Debtor for a period of one year.

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

Party Information

Debtor(s):

Edwin Wellington Terry

Pro Se

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#17.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18; 11-13-18; 1-15-19

Docket 0

Tentative Ruling:

4/15/2019

On January 31, 2018, the Official Committee of Unsecured Creditors for Liberty Asset Management Corporation ("Liberty") filed a *First Amended Chapter 11 Plan of Liquidation* [Bankr. Doc. No. 609, Ex. A] (the "Liberty Plan"). On June 18, 2018, the Court entered an order confirming the Liberty Plan. *See* Bankr. Doc. No. 655 (the "Confirmation Order").

The Liberty Plan provides for the appointment of a Plan Administrator. The Plan Administrator is the successor-in-interest Liberty, is the sole representative of Liberty's estate, and is authorized to participate in judicial proceedings to protect and enforce creditors' rights to the assets of Liberty's estate. *See* Liberty Plan, Art. VII(D) (2)(c). Pursuant to the Confirmation Order, the Plan Administrator has been substituted for Liberty as a defendant in this action.

This action was initially commenced in the Los Angeles Superior Court (the "State Court") on January 19, 2016. Plaintiffs allege that Liberty and various other persons and entities acting in concert with Liberty made misrepresentations to induce Plaintiffs to invest in property located at 119 Furlong Lane, Bradbury, California (the "Furlong Property"). Plaintiffs seek damages for breach of contract, intentional and fraudulent misrepresentations, and violations of California's Business and Professions Code and Corporations Code. The action was removed to the Bankruptcy Court on June 17, 2016.

The Court notes that this action is stayed as to defendant Shelby Ho as a result of Ms. Ho's commencement of a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of California, San Francisco Division. *See* Debtor Ho's Notice of Stay [Adv. Doc. No. 58].

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On August 23, 2018, the Furlong Property was sold for \$6.9 million pursuant to a sale order entered in the bankruptcy case of Oak River Asset Management LLC ("Oak River"), an entity wholly owned by Liberty.

The Court has previously found that certain aspects of this action may be resolved by litigation as to the allowability of Proofs of Claim (collectively, the "Claims") filed by the Plaintiffs in the bankruptcy cases of Liberty and Oak River. *See* Order Continuing Status Conference from November 13, 2018 at 10:00 a.m. to January 15, 2019, at 10:00 a.m. [Adv. Doc. No. 60] at 2. On January 7, 2019, the Court entered orders in the Liberty and Oak River cases establishing the allowed amounts of Plaintiffs' Claims (such orders collectively, the "Claims Allowance Orders").

Subsequent to the entry of the Claims Allowance Orders, the Plan Administrator filed a motion seeking to substantively consolidate the estates of Liberty and Oak River (the "Substantive Consolidation Motion"). Had the Substantive Consolidation Motion been granted, it would have affected the distribution upon Plaintiffs' claims, and therefore would have affected this litigation. Pursuant to the request of the Plaintiffs and the Plan Administrator, the Court continued the Status Conference set for February 5, 2019, pending resolution of the Substantive Consolidation Motion.

On February 25, 2019, the Court denied the Substantive Consolidation Motion. Bankr. Doc. Nos. 909 and 904. The Plan Administrator appealed the denial of the Substantive Consolidation Motion to the District Court, but subsequently reached a settlement with Plaintiffs. Bankr. Doc. No. 914. No timely objections to the settlement have been filed in the bankruptcy cases of Liberty or Oak River.

The settlement provides that Plaintiffs will dismiss the Plan Administrator and Oak River from this proceeding within three business days after the entry of a final unstayed order approving the settlement.

Any objection to dismissal by Defendants Benjamin Kirk, Lucy Gao, Shelby Ho, Liberty Capital Management, Inc., Pacific Sunshine Investments, LLC, and/or Bradbury Furlong LLC (collectively, the "Remaining Defendants") shall be filed by no later than **May 3, 2019**. *See* Fed. R. Civ. Proc. 41(a)(2) (providing that where a defendant has responded to the complaint, an "action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper"). In the event that any of the Remaining Defendants object to dismissal, the Court will determine whether a hearing on such objection is required, and will notify the parties accordingly. The Court will prepare and enter a separate order advising the Remaining Defendants of the deadline to object to dismissal; the Plan Administrator shall serve that order upon the Remaining Defendants and file a proof of service so indicating.

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A continued Status Conference shall be held on **June 11, 2019, at 10:00 a.m.** A Status Report shall be filed by no later than fourteen days prior to the hearing. In the event the action has been dismissed as to all defendants, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

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

Party Information

Debtor(s):

Liberty Asset Management

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

Defendant(s):

HANDING HOLDING

Pro Se

TLH REO MANAGEMENT LLC

Pro Se

BRADBURY FURLONG LLC

Pro Se

OAK RIVER ASSET

Pro Se

LIBERTY ASSET MANAGEMENT

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

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PACIFIC SUNSHINE Pro Se

TA-LIN HSU Pro Se

SHELBY HO, aka TSAI-LUAN HO Pro Se

VANESSA LAVENDERA, aka Pro Se

LUCY GAO, aka XIANGXIN GAO, Pro Se

BENNY KO, aka BENN KO, aka Pro Se

LIBERTY CAPITAL Pro Se

Plaintiff(s):

RICHBEST HOLDING LLC Pro Se

FRANK LEE, Co-Trustee of THE Represented By
David S Henshaw

CHRISTOPHER D. LEE Represented By
David S Henshaw

YCJS 2012 LLC Represented By
David S Henshaw

AHA 2012 LLC Represented By
David S Henshaw

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01337 LIBERTY ASSET MANAGEMENT CORPORATION et al v. Gao et al

#18.00 Status Hearing RE: [1] Adversary case 2:16-ap-01337. Complaint by LIBERTY ASSET MANAGEMENT CORPORATION against Lucy Gao, Benjamin Kirk. (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Greenwood, Gail)

Docket 1

Tentative Ruling:

4/15/2019

On September 14, 2017, the Court dismissed without prejudice all claims for relief that were (a) not set forth in the *Joint Pretrial Stipulation* [Doc. No. 104] and/or (b) were not adjudicated in connection with the *Findings of Fact and Conclusions of Law Regarding Motion by the Official Committee of Unsecured Creditors for Summary Adjudication of Defendants' Liability for Breach of Fiduciary Duties and Accounting* [Doc. No. 57]. See Order Dismissing Remaining Claims Without Prejudice [Doc. No. 136].

On December 29, 2017, the Court entered a *Judgment in Favor of Plaintiff and Against Defendants, Jointly and Severally, in the Amount of \$74,140,695.29* [Doc. No. 142] (the "Judgment"). On February 8, 2019, the District Court reversed and remanded the Judgment and the *Order Granting the Official Committee of Unsecured Creditors' Motion for Summary Adjudication of Defendants' Liability for Breach of Fiduciary Duties and Accounting* [Doc. No. 58].

Having reviewed the Status Report filed by the Plan Administrator, the Court HEREBY ORDERS as follows:

- 1) The following litigation deadlines shall apply to the adjudication of the Plan Administrator's claims for breach of fiduciary duty and failure to account:
 - a) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - b) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions

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related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- c) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- d) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- e) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- f) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific

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Chapter 11

prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

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

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Lucy Gao

Represented By
Stephen R Wade

Benjamin Kirk

Represented By
Derrick Talerico

Plaintiff(s):

Official Committee of Unsecured

Represented By
Gail S Greenwood
Jeremy V Richards
Mitchell B Ludwig

Bradley D. Sharp

Represented By
Jeremy V Richards
Mitchell B Ludwig

LIBERTY ASSET MANAGEMENT

Represented By
Jeremy V Richards
Gail S Greenwood

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#21.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 3-12-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

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

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

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

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#22.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

At the prior Status Conference, the Court advised the parties that it would set litigation deadlines in the event the action had not settled by the date of this Status Conference. The action has not settled. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The following litigation deadlines shall apply:
 - a) Defendant shall respond to the Complaint by no later than **4/30/2019**.
 - b) A continued Status Conference is set for **6/11/2019 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - c) The last day to amend pleadings and/or join other parties is **7/11/2019**.
 - d) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - e) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - f) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 16, 2019

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10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- g) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- h) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- i) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- j) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

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

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

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

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#23.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#24.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#25.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: DISMISSED 3-6-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#26.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

At the prior Status Conference, the Court advised the parties that it would set litigation deadlines in the event the action had not settled by the date of this Status Conference. The action has not settled. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The following litigation deadlines shall apply:
 - a) A continued Status Conference is set for **6/11/2019 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - b) The last day to amend pleadings and/or join other parties is **7/11/2019**.
 - c) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - d) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - e) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert

**United States Bankruptcy Court
Central District of California
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CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- f) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - g) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - h) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - i) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) In view of the parties' representation that they are involved in active settlement negotiations, the Court will not at this time order the parties to attend formal mediation.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. United States

#27.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordan Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 1-15-19; 2-12-19

Docket 1

Tentative Ruling:

4/15/2019

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **2/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **5/28/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/27/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/16/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- e) The last day for dispositive motions to be heard is **7/23/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/27/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **8/13/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

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CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **8/26/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) In view of the parties' representation that they are involved in active settlement negotiations, the Court will not at this time order the parties to attend formal mediation.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

United States Department of Health

Represented By
Elan S Levey

**United States Bankruptcy Court
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CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#28.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11
determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#100.00 Pre-Trial Conference RE: [66] Crossclaim by Ronald Peterson against Anne Lan Peterson, Brad D. Krasnoff, Chapter 7 Trustee (Ham, Yoon)

Docket 66

Tentative Ruling:

4/15/2019

Hearing VACATED. This adversary proceeding has been dismissed.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

CONT... Anne Lan Peterson

Chapter 7

**United States Bankruptcy Court
Central District of California
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Kim, Christian)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Pro Se

DOES 1-20, inclusive

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#102.00 Pre-Trial Conference RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud)) (Tran, Kelly Ann)

Docket 1

Tentative Ruling:

4/15/2019

The Court approves the *Amended Joint Pretrial Stipulation* submitted by the parties. The *Joint Pretrial Stipulation* shall be entered as the Pretrial Order, and shall govern trial of this action, unless modified to prevent manifest injustice.

Trial shall take place on **Monday, April 29, 2019, commencing at 9:00 a.m.** The trial materials set forth in the *Order Re: Courtroom Procedures* [Doc. No. 4] shall be submitted by no later than **Thursday, April 18, 2019** (seven court days prior to trial).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... Christina Marie Uzeta

Chapter 7

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#103.00 HearingRE: [40] Motion to disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee . (Attachments: # 1 POS)(united states trustee (hy))

Docket 40

Tentative Ruling:

4/15/2019

For the reasons set forth below, the Disgorgement Motion is GRANTED.

Pleadings Filed and Reviewed

1. United States Trustee's Notice of Motion and Motion for an Order Disgoring Attorney Compensation Pursuant to 11 U.S.C. § 329 and Concurrently-Filed Request for Judicial Notice in Support Thereof [Doc. No. 40] (the "Disgorgement Motion")
2. Request for Judicial Notice in Support of United States Trustee's Motion for an Order Disgoring Attorney Compensation Pursuant to 11 U.S.C. § 329 [Doc. No. 41] (the "RJN")
3. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary chapter 11 petition for relief on October 16, 2018 (the "Petition Date"). On November 23, 2018, the Debtor filed an application to employ Leo Fasen ("Counsel") as his chapter 11 bankruptcy counsel [Doc. No. 17] (the "First Employment Application"). After the United States Trustee (the "UST") filed a timely objection and request for hearing [Doc. No. 18], the Debtor filed an amended application to employ [Doc. No. 19] (the "Second Employment Application"). Counsel also simultaneously filed an application for approval of compensation [Doc. No. 20] (the "Fee Application"). The UST filed a timely opposition to the Second Employment Application and Fee Application [Doc. No. 24].

The UST also sought conversion of the case pursuant to § 1112(b) [Doc. No. 21].

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CONT... Hakop Jack Aivazian

Chapter 7

On January 17, 2019, the Court entered an order granting the UST's motion and converting this case to a case under chapter 7 [Doc. No. 31].

The UST now seeks an order requiring Counsel to disgorge the entire \$8,000 in fees he received in connection with his representation of the Debtor. First, the UST contends that Counsel failed to obtain an order authorizing his employment pursuant to § 327(a) and, as a result, all fees should be disgorged pursuant to § 329 and pursuant to the Court's inherent authority under § 105(a).

Second, the UST argues that disgorgement is also warranted under § 329(b) because the compensation Counsel received exceeded the reasonable value of services provided and because Counsel made misrepresentations to the Court in his First and Second Employment Applications and failed to make adequate disclosures regarding his retainer. The UST contends that Counsel failed to disclose in the First Employment Application that he was owed a pre-petition claim and that he required the Debtor to make post-petition payments for his pre-petition fees. The UST also argues that in response to its opposition highlighting this issue, Counsel filed the Second Employment Application stating that he had already received the full \$8,000 retainer. Therefore, the UST concludes that counsel's conduct warrants full disgorgement of his fees and requests that the Court order Counsel to disgorge fees in the amount of \$8,000 within thirty days of entry of the order granting this Disgorgement Motion, payable to the Chapter 7 trustee.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

The Bankruptcy Code and the applicable rules require counsel to seek authority from the court to represent a debtor in possession during a Chapter 11 case and to be compensated from the estate. *See* 11 U.S.C. § 327(a), Fed. R. Bankr. P. 2014, Local Bankruptcy Rule 2016-1. "Court approval of the employment of counsel for a debtor in possession is *sine qua non* to counsel getting paid. Failure to receive court approval for the employment of a professional in accordance with § 327 and Rule 2014 precludes the payment of fees." *In re Shirley*, 134 B.R. 940, 943 (B.A.P. 9th Cir. 1992) (footnote omitted); *see also Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir. 1995) ("In bankruptcy proceedings, professionals who perform

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Tuesday, April 16, 2019

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11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

services for a debtor in possession cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order").

Section 329(a) requires any attorney representing a debtor to file "a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition . . ." Section 329(b) provides that "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to the entity that made such payment." Rule 2017(a) further provides:

On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly *and in contemplation of the filing of a petition under the Code . . .* to an attorney for services rendered or to be rendered is excessive.

Fed. R. Bankr. P. 2017(a) (emphasis added). "Once a question has been raised about the reasonableness of an attorney's fees under section 329, the attorney bears the burden of establishing that the fee is reasonable." 3 Collier on Bankruptcy ¶ 329.01 (16th ed. 2019).

The Court finds that disgorgement is warranted. First, the Court agrees that Counsel's failure to obtain an order authorizing his employment precludes him from retaining any compensation received on account of any post-petition services performed. Second, for the reasons set forth in the UST's Disgorgement Motion, the Court finds that Counsel failed to make full and complete disclosures in the pleadings filed with this Court and Counsel's actions warrant disgorgement of any pre-petition retainer fees. The Court also finds that the \$8,000 in compensation Counsel received exceeds the reasonable value of services provided to the Debtor because, as discussed in more detail in the Court's final ruling converting this case [Doc. No. 29], Counsel was either unqualified or ill prepared to represent the Debtor in this case.

Finally, disgorgement is appropriate because Counsel has failed to carry his burden of establishing that his fees are reasonable. Pursuant to Local Bankruptcy

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11:00 AM

CONT... Hakop Jack Aivazian Chapter 7

Rule 9013-1(o), the Court deems Counsel's failure to timely oppose the Disgorgement Motion as his consent to the relief the UST seeks.

III. Conclusion

For the reasons set forth above, the Disgorgement Motion is GRANTED.

The UST is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#104.00 Hearing
RE: [511] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 511

***** VACATED *** REASON: CONTINUED 6-18-19 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 16, 2019

Hearing Room 1568

11:00 AM

2:19-10850 Laura Marie Sarkisian

Chapter 11

#105.00 Hearing
RE: [16] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 16

***** VACATED *** REASON: DISMISSED 3-21-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Marie Sarkisian

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 17, 2019

Hearing Room 1568

10:00 AM

2:18-18233 Jessie O Unite

Chapter 7

Adv#: 2:18-01325 South Bay Credit Union v. Unite

#1.00 Hearing
RE: [16] Motion for Default Judgment Under LBR 7055-1 (Simon, A. Lysa)
WARNING: See entry [18] for corrective action. Attorney to re-file with correct hearing date 4-17-19 at 10:00 a.m. Modified on 1/22/2019 (Lomeli, Lydia R.).

Docket 16

***** VACATED *** REASON: NOTICE VACATING HEARING FILED 1-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie O Unite

Represented By
Edwin A Barnum

Defendant(s):

Jessie Orden Unite

Pro Se

Plaintiff(s):

South Bay Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Wesley H Avery (TR)

Represented By
Edwin A Barnum

**United States Bankruptcy Court
Central District of California
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Wednesday, April 17, 2019

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#2.00 Status Hearing re post confirmation status conference

fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17; 3-13-18' 6-12-18; 9-12-18;
12-12-18; 2-13-19

Docket 0

*** VACATED *** REASON: Order Converting Case to Chapter 7
Entered 3-27-2019 [Doc. No. 454]

Tentative Ruling:

2/12/2019

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor and Debtor-In-Possession's Post Confirmation Report on Status of Reorganization and Declaration of Deborah Earle in Support Thereof [Doc. No. 445], the Court CONTINUES the status conference to April 17, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

**United States Bankruptcy Court
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Wednesday, April 17, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing re [1279] *Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279]

Docket 0

Tentative Ruling:

4/16/2019

For the reasons set forth below, the Sale Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtors' Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief [Doc. No. 2115] (the "Sale Motion")
- 2) Opposition papers:
 - a) Limited Opposition of Belfor USA Group, Inc., to Debtors' [Sale Motion] [Doc. No. 2130]
 - b) Objection of United Healthcare Insurance Company to Debtors' Motion for Order Approving Form of Asset Purchase Agreement for Stalking Horse Bidder [Doc. No. 2145]
 - c) SEIU-UHW's Objection and Reservation of rights to Debtors' Sale Motion [Doc. No. 2147]
 - d) Limited Objection and Reservation of Rights of United Nurses Association of California to Motion of Debtors for Approval of Remaining Hospital Assets to the Highest Bidder [Doc. No. 2155]
 - e) Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and as Series 2017 Note Trustee, with Respect to [Sale Motion] [Doc. No. 2156]
 - f) Official Committee of Unsecured Creditors' Response to the Debtors' SGM Sale Motion [Doc. No. 2164]
 - g) Reservation of Rights of California Statewide Communities Development Authority to Motion of Debtors for Approval of Sale of Remaining Hospital

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CONT...

Verity Health System of California, Inc.

Chapter 11

Assets to the Highest Bidder [Doc. No. 2168]

- 3) Omnibus Reply in Support of [Sale Motion] [Doc. No. 2211]
- 4) List of Counterparties to Executory Contracts and/or Unexpired Leases who Filed Objections to Assumption and Assignment and/or to the Debtors' Proposed Cure Amounts:
 - a) NFS Leasing [Doc. No. 1819]
 - b) Swinerton Builders [Doc. No. 1830]
 - c) Roche Diagnostics Corp. [Doc. No. 1849]
 - d) Cigna Entities [Doc. No. 1850]
 - e) C.R. Bard, Inc. [Doc. No. 1852]
 - f) NTT Data Services [Doc. No. 1853]
 - g) RightSourcing, Inc. [Doc. No. 1856]
 - h) AppleCare Medical Group, Inc.; AppleCare Medical Group, St. Francis Inc.; Apple Care Medical Management, LLC [Doc. No. 1857]
 - i) UnitedHealthcare Ins. Co. [Doc. No. 1858]
 - j) GE HFS, LLC [Doc. No. 1863]
 - k) Kaiser Foundation Hospitals [Doc. No. 1866]
 - l) Experian Health, Inc. f/k/a Passport Health Communications, Inc. [Doc. No. 1869]
 - m) LinkedIn Corp. [Doc. Nos. 1870 and 1877]
 - n) Smith & Nephew, Inc. [Doc. No. 1873]
 - o) Michael Pacelli [Doc. No. 1874]
 - p) Conifer Health Solutions [Doc. No. 1875]
 - q) Sunquest Information Systems [Doc. No. 1876]
 - r) California Department of Healthcare Services [Doc. No. 1879]
 - s) Medtronic USA, Inc. [Doc. No. 1881]
 - t) QuadraMed Affinity Corp. and Picis Clinical Solutions, Inc. [Doc. No. 1882]
 - u) Cerner Corp. [Doc. No. 1885]
 - v) Abbott Laboratories Inc. and Alere Informatics, Inc. [Doc. No. 1890]
 - w) Care First Health Plan [Doc. No. 1891]
 - x) TeleTracking Technologies, Inc. [Doc. No. 1892]
 - y) Parallon Revenue Cycle Services, Inc. f/k/a The Outsource Group, Inc. [Doc. Nos. 1904 and 2113]
 - z) Hooper Healthcare Consulting [Doc. No. 1926]
 - aa) Aetna Life Ins. Co. [Doc. No. 1930]
 - bb) Angeles IPA Medical Group [Doc. No. 1933]

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- cc) HealthNet, LLC [Doc. No. 1940]
- dd) Long Beach Memorial Medical Center [Doc. No. 1946]
- ee) SCAN Health Plan [Doc. Nos. 1948 and 2162]
- ff) Transplant Connect, Inc. [Doc. No. 1953]
- gg) Premier, Inc. [Doc. Nos. 1954 and 2066]
- hh) DaVita, Inc. [Doc. No. 2058]
- ii) Alcon Vision [Doc. No. 2108]
- jj) St. Vincent IPA Medical Corp. and Angeles IPA Medical Group [Doc. No. 2146]
- kk) Angeles IPA Medical Group [Doc. No. 2150]
- ll) NantHealth, Inc. [Doc. No. 2157]
- mm) Cardinal Health 110, LLC, Cardinal Health 200, LLC, and Cardinal Health 414, LLC [Doc. No. 2161]
- 5) Papers filed in connection with the Bidding Procedures Motion:
 - a) Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 1279] (the "Bidding Procedures Motion")
 - b) Opposition Papers:
 - i) Limited Objection and Reservation of Rights of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to [Bidding Procedures Motion] [Doc. No. 1346]
 - ii) Reservation of Rights of U.S. Bank, N.A. [Doc. No. 1347]
 - iii) Objection of Cigna Entities to [Bidding Procedures Motion] [Doc. No. 1349]
 - iv) Limited Objection to [Bidding Procedures Motion] [filed by UnitedHealthcare Insurance Company] [Doc. No. 1351]
 - v) [California] Attorney General's Opposition to [Bidding Procedures Motion] [Doc. No. 1352]
 - vi) Creditor California Department of Health Care Services's Objection to

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- [Bidding Procedures Motion] [Doc. No. 1353]
- vii) SEIU-UHW's Objection and Reservation of Rights as to [Bidding Procedures Motion] [Doc. No. 1354]
- viii) IUOE, Stationary Engineers Local 39's Reservation of Rights Regarding [Bidding Procedures Motion] [Doc. No. 1355]
- ix) Response and Reservation of Rights to Motion to Sell Asset and for Related Relief [filed by UMB Bank, N.A.] [Doc. No. 1357]
- x) Reservation of Rights of MGH Painting, Inc., Holder of a Mechanic's Lien Against St. Vincent Medical Center, in Connection with [Bidding Procedures Motion] [Doc. No. 1358]
- xi) California Nurses Association Objection to [Bidding Procedures Motion] [Doc. No. 1359]
- (1) Declaration of Kyrsten B. Skogstad in Support of Objection [Doc. No. 1360]
- xii) Limited Objection and Reservation of Rights of San Mateo County & Health Plan of San Mateo Re Debtors' [Bidding Procedures Motion] [Doc. No. 1361]
- (1) Proof of Service [Doc. No. 1383]
- xiii) Limited Opposition of Belfor USA Group, Inc. to Debtors' Bidding Procedures Motion [Doc. No. 1364]
- xiv) Limited Objection and Reservation of Rights of St. Vincent IPA Medical Corporation & Angeles IPA Re Debtors' [Bidding Procedures Motion] [Doc. No. 1388]
- xv) UNAC's Limited Objection and Reservation of Rights Regarding [Bidding Procedures Motion] [Doc. No. 1395]
- xvi) Opposition to the Debtors' [Bidding Procedures Motion filed by Hooper Healthcare Consulting LLC] [Doc. No. 1397]
- xvii) Official Committee of Unsecured Creditors' Limited Objection to [Bidding Procedures Motion] [Doc. No. 1399]
- (1) Declaration of Cynthia A. Nelson in Support of Official Committee of Unsecured Creditors' Limited Objection to SGM Sale Motion [Doc. No. 1401]
- (2) Request for Judicial Notice [Doc. No. 1402]
- (3) Proof of Service [Doc. No. 1410]
- (4) Joint Supplement to Objection and Response to Debtors' Sale Motion [Doc. No. 1460]

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- c) Reply Papers:
 - i) Debtors' Omnibus Reply to Objections to Debtors' Bid Procedures Motion by (I) U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services, and (II) California Department of Health Care Services [Doc. No. 1438]
 - ii) [Debtors'] Reply to California Attorney General's Opposition [to Bidding Procedures Motion] [Doc. No. 1442]
 - iii) Reply of Strategic Global Management, Inc. to Objections to [Bidding Procedures Motion] [Doc. No. 1444]
 - iv) [Debtors'] Omnibus Reply [Doc. No. 1448]
 - v) [Debtors'] Omnibus Reply to Union Objections [Doc. No. 1449]
 - (1) Objection to Declaration of Kyrsten B. Skogstad [Doc. No. 1450]
 - (a) Notice of Errata to Objection to Declaration of Kyrsten B. Skogstad [Doc. No. 1453]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On February 19, 2019, the Court entered an *Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Doc. No. 1572] (the "Bidding Procedures Order," and the motion for entry of the Bidding Procedures Order, the "Bidding Procedures Motion"). The Bidding Procedures Order approved an Asset Purchase Agreement (the "APA") between the Debtors and stalking-horse bidder Strategic Global Management ("SGM"), and established procedures governing the auction of St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center ("St. Vincent"), St. Vincent Dialysis Center ("St. Vincent Dialysis"), Seton Medical Center ("Seton"), Seton Medical Center Coastsides ("Seton Coastsides"), and related

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assets (collectively, the "Hospitals"). SGM's bid is \$610 million, with \$420 million allocated to St. Francis, \$120 million allocated to St. Vincent, and \$70 million allocated to Seton and Seton Coastsides combined. SGM is also responsible for paying any cure costs owed in connection with executory contracts and/or unexpired leases that it designates for assumption and assignment.

The Bidding Procedures Order established a deadline of March 28, 2019, at 4:00 p.m. **[Note 1]** for the submission of partial bids, and a deadline of April 3, 2019, at 4:00 p.m., for the submission of full bids. The Debtors received one Qualified Bid for St. Vincent and one Qualified Bid for St. Francis. **[Note 2]** The Debtors did not receive a full system Qualified Bid. **[Note 3]** After consultation with the Consultation Parties, the Debtors determined not to conduct either a Partial Bid Auction or Full Bid Auction. Accordingly, SGM was named the Successful Bidder under the Bidding Procedures Order.

The APA requires the Debtors to use commercially reasonable to facilitate the renegotiation of the collective bargaining agreements (the "CBAs") between the Debtors and their employees:

Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available

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and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

APA at ¶ 4.7.

A. Assumption of Certain Executory Contracts and Unexpired Leases

The Bidding Procedures Order established procedures governing the assumption and assignment of executory contracts and unexpired leases. Pursuant to those procedures, the Debtors filed and served a *Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned* [Doc. No. 1704] (the "First Cure Notice"), a *Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned* [Doc. No. 1836] (the "Second Cure Notice"), and a *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned* [Doc. No. 2065] (the "Third Cure Notice," and together with the First and Second Cure Notices, the "Cure Notices"). The Cure Notices identify the amounts (the "Cure Amounts"), if any, that the Debtors believe are owed to each counterparty on account of executory contracts and unexpired leases which the Debtors seek to assume and assign to SGM (the "Designated Contracts").

Various counterparties filed objections to the Cure Amounts, many of which have been resolved or are moot. After certain counterparties filed objections, SGM decided that it no longer wished to designate the agreements with such counterparties for assumption and assignment. Specifically, SGM is no longer seeking assignment of agreements with Workday, Inc. [Doc. No. 1804], LinkedIn Corporation [Doc. Nos. 1870 and 1877], Michael Pacelli [Doc. No. 1874], Cerner Corporation [Doc. No. 1885], or Care First Health Plan [Doc. No. 1891].

With respect to objections filed by Eurofins VRL Inc. [Doc. No. 1788], Swinterton Builders [Doc. No. 1830], CR Bard, Inc. [Doc. No. 1852], RightSourcing [Doc. No. 1856], Sunquest Information System, Inc. [Doc. No. 1876], TeleTracking Technologies, Inc. [Doc. No. 1892], Hooper Healthcare Consulting LLC [Doc. No. 1926], and Transplant Connect [Doc. No. 1953], the Debtors have reached an agreement with each counterparty establishing the appropriate Cure Amount.

The Debtors have entered into stipulations, which have been approved by the Court, providing for a continuance of the hearing as to cure and adequate assurance issues with the following counterparties: NFS Leasing, Inc. [Doc. No. 1819]; Roche

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Diagnosics Corporation [Doc. No. 1849]; NTT Data Services Holding Corporation [Doc. No. 1853], AppleCare Medical Group, Inc., AppleCare Medical Group, St. Francis Inc., and AppleCare Medical Management LLC [Doc. Nos. 1857 and 2144]; UnitedHealthcare Insurance Company [Doc. Nos. 1858 and 2145]; GE HFS, LLC [Doc. No. 1863]; Kaiser Foundation Hospitals [Doc. No. 1866]; Experian Health, Inc. f/k/a Passport Health Communications, Inc. [Doc. No. 1869]; Smith & Nephew, Inc. [Doc. No. 1873]; Conifer Health Solutions, LLC [Doc. No. 1875]; Medtronic USA, Inc. [Doc. No. 1881]; QuadraMed Affinity Corporation and Picis Clinical Solutions, Inc. [Doc. No. 1882]; Angeles IPA Medical Group [Doc. No. 1933]; Aetna Life Insurance Company [Doc. No. 1930]; Parallon Revenue Cycle Services, Inc. f/k/a The Outsource Group, Inc. [Doc. Nos. 1904 and 2113]; St. Vincent IPA [Doc. No. 1949]; SCAN Health Plan [Doc. Nos. 1965 and 2162]; DaVita, Inc. [Doc. No. 2058]; Premier, Inc. and its subsidiaries [Doc. Nos. 1954 and 2066]; Alon Vision LLC [Doc. No. 2108]; California Department of Healthcare Services [Doc. No. 1879], Cigna Healthcare of California, Inc., Cigna Health Life Insurance Company and Life Insurance Company of North America [Doc. No. 1850]; Abbott Laboratories, Inc. and Alere Informatics, Inc. [Doc. No. 1890]; HealthNet [Doc. No. 1940]; and NantHealth, Inc. [Doc. No. 2157]. The continued hearing is set for **June 5, 2019, at 10:00 a.m.**

The Debtors have attempted to reach a stipulation providing for a continuance of the hearing on objections asserted by Cardinal Health 110, LLC, Cardinal Health 200, LLC, and Cardinal Health 414, LLC (collectively, "Cardinal Health"); however, Cardinal Health has not yet responded.

B. SEIU-UHW's Objection and the Debtors' Response

The Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW") represents approximately 1,292 of the Debtors' employees at St. Francis and St. Vincent. Employees of the Debtors represented by SEIU-UHW are covered by CBAs containing successor clauses that purport to obligate any purchaser of the Hospitals to assume the CBAs in their entirety.

SEIU-UHW argues that the sale cannot be approved until the Debtors have first complied with the requirements of § 1113. SEIU-UHW relies upon *American Flint Glass Workers Union v. Anchor Resolution Corp*, 197 F.3d 76, 81-82 (3d Cir. 1999), in which the Third Circuit held that a debtor could not alter its obligations under a CBA through a partial assumption and assignment to a purchaser because that would be an "attempt to effect an alteration of the CBA" and therefore the debtor "was required to comply with the procedures set out in Code § 1113." *Am. Flint Glass*

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Workers, 197 F.3d at 81–82.

The Debtors contend that SEIU-UHW's objection lacks merit. First, the Debtors argue that SGM has committed to negotiate with all unions to attempt to modify the CBAs, making it possible that a consensual resolution regarding the CBAs may be achieved. Second, the Debtors assert that the sale may be approved in advance of § 1113 relief. In support of this position, Debtors rely upon *Local 211 v. Family Snacks, Inc.*, *Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001):

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

C. Objections by St. Vincent IPA and Angeles IPA and the Debtors' Response

St. Vincent IPA Medical Corporation and Angeles IPA (collectively, "St. Vincent IPA") are parties to *Healthcare Services Risk Sharing Agreements* (the "Risk Sharing Agreements") with certain of the Debtors. St. Vincent IPA argues that the Debtors should be required to withhold or earmark approximately \$12 million from the sale proceeds to ensure that sufficient funds are available to pay the full Cure Amount that may ultimately be owed to St. Vincent IPA. St. Vincent IPA asserts that the Debtors have not clearly specified the Cure Amount that will be withheld.

The Debtors assert that St. Vincent IPA's concerns are not warranted for the following reasons:

- 1) Under the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V)*

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Modifying Automatic Stay, and (VI) Granting Related Relief [Doc. No. 409]
(the “Final DIP Order”), all sale proceeds must be deposited in an Escrow Deposit Account. Deposit of the sale proceeds into the Escrow Deposit Account prevents the Debtors from spending or commingling the sale proceeds. Thus, the earmarking requested by St. Vincent IPA is not necessary.

2) Under the APA, SGM is required to pay the Cure Amount. St. Vincent IPA has not suggested that SGM is unwilling or unable to do so.

In an attempt to address St. Vincent’s concerns, the Debtors have modified § 15 of the proposed Sale Order as follows:

To the extent an Assumption Dispute relates solely to the Cure Amount, the Debtors may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of the Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and Buyer has remitted such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the relevant Debtor(s), or (b) the Buyer provides to the relevant Debtor(s) a separate reasonably acceptable undertaking to pay the disputed cure amount (or such smaller amount as may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor party and the applicable Buyer). The Debtors shall be and hereby are authorized to pay disputed cure amounts from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent the Buyer remitted to Sellers the amount required by item (a) of this paragraph of the Order.

II. Findings and Conclusions

A. Issues that Have Been Resolved or Will be Adjudicated at a Later Date

To provide a clear record, issues that have either been resolved or preserved for adjudication at a later date are set forth herein.

1. Adjudication of Objections to the Assumption and Assignment of Executory Contracts and Unexpired Leases

As set forth above, a continued hearing as to cure and adequate assurance issues

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raised by various counterparties to executory contracts and unexpired leases designated for assumption and assignment shall take place on **June 5, 2019, at 10:00 a.m.** Although Cardinal Health has not yet stipulated to a continuance of the hearing on its objections, the Court finds it appropriate to continue the hearing on Cardinal Health's objection to that same date. The Debtors' deadline to reply to Cardinal Health's objection is **May 29, 2019, at 4:00 p.m.**

2. Reservations of Rights Asserted by Various Parties

The United Nurses Association of California/Union of Health Care Professionals ("UNAC") reserves its rights with respect to any § 1113 motion that may be filed in the future. The Court confirms that all issues arising under § 1113 are preserved for adjudication at a later time.

The Official Committee of Unsecured Creditors (the "Committee") reserves the right to challenge security interests asserted by the Prepetition Secured Creditors (as defined in the Final DIP Order). The Committee's ability to challenge the validity of the security interests asserted by the Prepetition Secured Creditors is preserved.

Various parties reserve their rights to object to the language of the final order approving the Sale Motion. The Debtors are directed to work with interested parties to satisfy concerns regarding the form of the Sale Order.

3. Mechanics' Liens Asserted by MGH Painting, Inc. and Belfor USA Group, Inc.

MGH Painting, Inc. ("MGH Painting") and Belfor USA Group, Inc. ("Belfor") assert mechanic's liens against St. Vincent and object to any sale free and clear of those liens. The Debtors have reviewed the mechanic's liens and have confirmed that the mechanic's liens will attach to the sale proceeds of St. Vincent.

4. Issues Raised by the California Statewide Communities Development Authority

The California Statewide Communities Development Authority (the "CSCDA") filed a reservation of rights with respect to certain obligations arising under financing extended by the CSCDA to Seton. The Debtors state that they have resolved CSCDA's concerns and that the parties have agreed to a form of *Assignment and Assumption Agreement* to be executed by SGM and Seton with respect to the obligations.

5. Issues Raised by the California Attorney General

The California Attorney General (the "Attorney General") filed an objection

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seeking clarification that the sale transaction is subject to his review and approval pursuant to Cal. Corp. Code § 5914. The Debtors and the Attorney General have agreed to include the following language preserving the Attorney General's rights in the Sale Order:

The California Attorney General, the Debtors, the Consultation Parties (as defined in the Bid Procedures Order) and the Purchaser, reserve all rights, arguments and defenses concerning the California Attorney General's authority, if any, to review the Sale under California Corporations Code sections 5914-5924 and California Code of Regulations - Title 11, Chapter 15, section 999.5, and any conditions issued thereto. Nothing in this stipulation or sale order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

The Court notes that although the Debtors will submit to the Attorney General applications for transfer of the Hospitals pursuant to Cal. Corp. Code §§ 5914 *et seq.*, the Debtors reserve the right to challenge any conditions imposed by the Attorney General upon completion of the review, including the renewal of the conditions previously imposed in connection with the 2015 transaction involving the Debtors' predecessor. The Court finds that the Debtors' election to participate in the regulatory process established by Cal. Corp. Code §§ 5914 *et seq.* does not waive their ability to later assert that the Hospitals may be sold free and clear of conditions imposed by the Attorney General under § 363(f) of the Bankruptcy Code.

6. Issues Pertaining to the Transfer of the Debtors' Medi-Cal and Medicaid Provider Agreements

The Court has approved stipulations setting a continued hearing on issues pertaining to the transfer of the Debtors' Medi-Cal and Medicare Provider Agreements for **June 5, 2019, at 10:00 a.m.**

7. Issues Raised by United Healthcare Pertaining to the Sale of the Debtors' Accounts Receivable Free and Clear of United Healthcare's Recoupment Rights

United Healthcare Insurance Company ("United Healthcare") asserts that it has not been provided adequate assurance of SGM's future performance under certain Capitation Agreements that SGM has designated for assignment. United Healthcare further objects to any sale of the Debtors' accounts receivable free and clear of United

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Healthcare's recoupment rights. The Court has approved a stipulation continuing the hearing on all objections raised by United Healthcare to **June 5, 2019, at 10:00 a.m.**

B. St. Vincent IPA's Objection Regarding Withholding of the Sale Proceeds Has Been Sufficiently Addressed by Additional Language to be Included in the Sale Order

The Court finds that concerns raised by St. Vincent regarding its ability to recover the Cure Amount that it may ultimately be owed have been adequately addressed by the additional language that the Debtors propose to add to the Sale Order. The additional language provides that an agreement to which St. Vincent is a party may be assumed and assigned if the Court has estimated the maximum cure payment under § 502(c) and SGM has either remitted such amount to the Debtors or has provided an undertaking to pay such amount. In the Court's view, the proposed procedures provide a reasonable means of estimating St. Vincent's Cure Amount prior to final adjudication thereof. Further, the Court finds that the proposed procedures are reasonably calculated to ensure that St. Vincent ultimately will be paid whatever Cure Amount it is entitled to receive.

C. SEIU-UHW's Objection is Overruled

SEIU-UHW contends that the Debtors are required to obtain rejection of the CBAs under § 1113 prior to moving for approval of the sale. The Court has previously followed the approach set forth in *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001), in which the court held that "there is nothing in the language of §1113 that dictates when an application to reject must be made." *Family Snacks*, 257 B.R. at 895. The *Family Snacks* court reasoned that requiring the §1113 process to be completed prior to an asset sale would give unions undue power over the sale process to the detriment of other creditors:

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to

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plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

SEIU-UHW argues that *Family Snacks* is distinguishable because the CBAs at issue therein did not contain a successor clause prohibiting sale absent assumption of the CBA. The Court finds that the presence of successor clauses in the CBAs to which SEIU-UHW is a party does not require the Debtors to obtain § 1113 relief prior to entry of the Sale Order. The sale will not close until after the Attorney General has conducted a review pursuant to Cal. Corp. Code §§ 5914–5924. Pursuant to Cal. Corp. Code § 5915, the Attorney General has 90 days, plus an additional 45 days if certain conditions are satisfied, to conduct the review. During this interim period, the APA provides that SGM will attempt to renegotiate the CBAs. In the event that such negotiations fail, the Debtors have the option of seeking relief under § 1113. That is, the sale cannot close until the CBAs have either been renegotiated or modified under § 1113. Consequently, entry of the Sale Order now does not circumvent the protections afforded by § 1113.

D. The Debtors are Authorized to Assume and Assign the Executory Contracts and Unexpired Leases Designated by SGM

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the assumption of an executory contract or unexpired lease:

In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." ...

Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. See *Navellier v. Sletten*, 262 F.3d 923, 946

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n. 12 (9th Cir.2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The assumption and assignment of the Designated Contracts constitutes an exercise of the Debtors' sound business judgment. Assignment of the agreements is necessary to facilitate the sale of the Hospitals. The assumption and assignment of the Designated Contracts is approved. This ruling does not apply to those Designated Contracts to which counterparties have asserted an objection with respect to adequate assurance of future performance and/or the appropriate cure amount; adjudication of the assumption and assignment of such contracts shall occur on **June 5, 2019, at 10:00 a.m.**, as set forth above.

E. The Sale Motion is Granted

Section 363(b) permits the debtor or trustee to sell estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Debtors have demonstrated sufficient business justification for the sale. The Debtors incur significant operational losses at their hospitals, such that continued operations are not financially viable. A sale is the best means to preserve value for creditors.

The Court finds that the Debtors have adequately marketed the Hospitals. Cain Brothers ("Cain"), the Debtors' financial advisors, have been marketing the Hospitals since June 2018 and has contacted more than 181 strategic and financial buyers. Cain notified 90 parties of the sale process and provided access to a data room to sixteen parties who executed Non-Disclosure Agreements. Cain has remained in contact with

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potential purchasers and has been available to provide information.

Pursuant to §363(f)(2), the sale is free and clear of all liens asserted by secured claimants. All parties asserting secured claims have consented to the sale.

The Court finds that SGM is a good-faith purchaser entitled to the protections afforded by § 363(m). The APA was negotiated at arms-length and the Hospitals were vigorously marketed by Cain.

Notwithstanding Bankruptcy Rule 6004, the order approving the sale shall take effect immediately upon entry.

The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, all times are prevailing Pacific Time.

Note 2

Terms not defined herein have the meaning set forth in the Bidding Procedures Order and/or Bidding Procedures Motion.

Note 3

The Debtors received two letters from Prime Healthcare ("Prime"), one describing a potential partial bid for St. Francis and another describing a potential full system bid. Both letters acknowledged that the bids would "not be formally considered at auction" and were submitted solely "for reference, when needed when there is no credible backup bidder or all other bidders are unable to close."

Party Information

Debtor(s):

Verity Health System of California,

Represented By

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Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

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#4.00 HearingRE: [1925] Motion to Assume Lease or Executory Contract Notice of Motion and Motion of CO Architects for Entry of an Order Compelling the Debtor-in-Possession to Promptly Assume or Reject Executory Contracts; and (1) To the extent assumed, require that the Debtors cure of all defaults thereunder; or, alternatively (2) To the extent rejected, grant relief from stay to recover copyrighted works; Declaration of Stephen Epstein and Brian L. Davidoff in Support thereof

Docket 1925

Tentative Ruling:

4/16/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:16-16496 JW Wireless Inc.

Chapter 7

#100.00 Hearing re [49] Objection to Claim #2 by Claimant Atlantic Wireless, Inc.. in the amount of \$ 2,000,000.00 Filed by Creditor Lea Young Lee

Docket 0

Tentative Ruling:

4/16/2019

For the reasons set forth below, CONTINUE HEARING to September 25, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Objection by Debtor JW Wireless, Inc. and Parties in Interest JW Wireless OKC LLC, BJ Mobile, Inc., Shiang An Ben Her, Joan Yu, and Chu Feng Yu, to Proof of Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 43] (the "Atlantic Claim Objection")
2. Notice of Objection to Claim Objection [Doc. No. 43]
3. Opposition to Objection by Debtor JW Wireless, Inc. and Parties in Interest JW Wireless OKC LLC, BJ Mobile, Inc., Shiang An Ben Her, Joan Yu, and Chu Feng Yu, to Proof of Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 46] (the "Opposition to Atlantic Claim Objection")
4. Response to Opposition to Objection by Debtor JW Wireless, Inc. and Parties in Interest JW Wireless OKC LLC, BJ Mobile, Inc., Shiang An Ben Her, Joan Yu, and Chu Feng Yu, to Proof of Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 47] (the "Trustee's Response to Atlantic Claim Objection")
5. Reply in Support of Objection by Debtor JW Wireless, Inc. and Parties in Interest JW Wireless OKC LLC, BJ Mobile, Inc., Shiang An Ben Her, Joan Yu, and Chu Feng Yu, to Proof of Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 48] (the "Reply to Atlantic Claim Objection")
6. Stipulation to Continue Hearing on Objection to Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 52]
7. Order Approving Stipulation to Continue Hearing on Objection to Claim No. 2-1 of Atlantic Wireless, Inc. [Doc. No. 53]

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8. Jetworld, Inc., Jetstar Auto Sports, Inc. and Lea Young Lee's Objection to Claim No. 2-1 filed by Atlantic Wireless, Inc. [Doc. No. 49] (the "Second Atlantic Claim Objection")
9. Notice of Second Atlantic Claim Objection [Doc. No. 50]
10. Opposition to Jetworld, Inc., Jetstar Auto Sports, Inc. and Lea Young Lee's Objection to Claim No. 2-1 filed by Atlantic Wireless, Inc. [Doc. No. 55] (the "Opposition to Second Atlantic Claim Objection")
11. Jetworld, Inc., Jetstart Auto Sports, Inc. and Lea young Lee's Reply in Support of Objection to Atlantic Wireless, Inc. Claim No. 2-1 [Doc. No. 56] (the "Reply to Second Atlantic Claim Objection")
12. Jetworld, Inc., Jetstart Auto Sports, Inc. and Lea young Lee's Notice of Errata Regarding Missing Caption on its Reply in Support of Objection to Atlantic Wireless, Inc. Claim No. 2-1 [Doc. No. 57]

I. Facts and Summary of Pleadings

A. Relevant Background Facts

JW Wireless, Inc. (the "Debtor") filed this voluntary chapter 7 case on May 17, 2016 (the "Petition Date"). John J. Menchaca is the acting chapter 7 trustee (the "Trustee"). On June 10, 2016, the Trustee filed a *Notice of Possible Dividend and Order Fixing Time to File Claim* [Doc. No. 6-1] (the "Notice of Claims Bar Date"), which set a deadline of November 14, 2016 (the "Claims Bar Date"), for creditors to file proofs of claim.

On September 12, 2016, Atlantic Wireless, Inc. ("Atlantic") filed a timely Proof of Claim No. 2 (the "Atlantic Claim") asserting a claim for \$2,000,000 based upon the "[f]ailure of Debtor's affiliate to pay for assets acquired." *See* Atlantic Claim. Atlantic also attached an addendum describing the circumstances that provide the basis for its claim. *Id.*

B. The Avoidance Action

On April 10, 2018, the Trustee initiated an adversary proceeding by filing a complaint (the "Avoidance Complaint") against Cellco Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation

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JW Wireless Inc.

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("BJ Mobile"), Jetworld, Inc., a California corporation ("Jetworld"), JW Wireless OKC, an Oklahoma limited liability company ("JW OKC"), JWK Management, Inc., a California corporation, Jetstar Auto Sports, Inc, a California corporation . ("Jetstar"), Shaigan Ben Her ("Ben Her"), Lea Young Lee ("Lee"), Joan Yu ("J. Yu"), Chu Feng Yu ("CF Yu"), and Carolyn Rhyoo seeking to avoid and recover preferential and fraudulent transfers (the "Avoidance Action") (Adv. Case No. 2:18-ap-01097-ER).

C. The Atlantic Claim Objection [Note 1]

On February 18, 2019, the Debtor and BJ Mobile, Ben Her, J. Yu, and CF Yu (together, the "Objecting Parties") filed an objection to the Atlantic Claim [Doc. No. 43] (the "Atlantic Claim Objection"). In support of the Atlantic Claim Objection, the Debtor and Objecting Parties attached the Declaration of Kelvin J. Lo (the "Lo Decl."), in which Mr. Lo avers that "Debtor has standing to object because the outcome of this proceeding affects Debtor's rights because a surplus estate may exist." Lo Decl., ¶ 3. Mr. Lo also states that the Objecting Parties "have standing to object to the Claim under 11 U.S.C. Section 502(a), as the outcome of this claim objection directly affects their rights in the [Avoidance Action]." *Id.*, ¶ 4.

Atlantic filed a timely opposition asserting, among other things, that the Debtor and Objecting Parties lack standing [Doc. No. 46]. The Trustee also filed a timely response stating that, as of the date of the response, the estate was insolvent and noting that the only chance of the case being a surplus estate would be if the Trustee succeeds on his claims against some or all of the Objecting Parties and other defendants [Doc. No. 47].

On March 13, 2019, the Debtor and Objecting Parties filed a timely reply [Doc. No. 48]. However, the parties subsequently stipulated to continue the hearing to be heard in connection with a second objection to the Atlantic Claim (summarized below) [Doc. Nos. 52 & 53].

D. The Second Atlantic Claim Objection [Note 2]

On March 15, 2019, Jetworld, Jetstar, and Lee (together, the "Objectors") also filed an objection to the Atlantic Claim [Doc. No. 49] (the "Second Atlantic Claim Objection," and together with the "Atlantic Claim Objection, the "Claim Objections")

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asserting substantially similar arguments as those set forth in the Atlantic Claim Objection. Among other things, the Objectors argue that Lee has standing to file the Second Atlantic Claim Objection because she is listed as a creditor in the Debtor's bankruptcy schedules and because the Objectors requested the Trustee object to the Atlantic Claim and he declined to do so. In support, the Objectors attached a copy of an e-mail correspondence between counsel for the Objectors and the Trustee in which the Trustee's Counsel states: "[t]he Trustee is not inclined to file an objection to the Atlantic Wireless claim at this time." Second Atlantic Claim Objection, Declaration of G. Michael Jackson (the "Jackson Decl."), Exhibit B.

Atlantic filed a timely opposition to the Second Atlantic Claim Objection [Doc. No. 55]. The Objectors filed a timely reply in support of their Second Atlantic Claim Objection [Doc. Nos. 56 & 56].

II. Findings of Fact and Conclusions of Law

A. The Debtor, Objecting Parties, and Objectors Have Not Established Their Standing to Object to the Atlantic Claim

A timely filed proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)).

1. It is Premature for the Court to Determine Whether the Debtor has Standing

Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and, therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4; *see also In re I & F Corp.*, 219 B.R. 483 (Bankr. S.D. Ohio 1998) (chapter 7 debtor-corporation lacks standing to file objections to proofs of claim). The Ninth Circuit Bankruptcy Appellant Panel recently reaffirmed this conclusion:

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In the claim objection context, a chapter 7 debtor, 'in its individual capacity, lacks standing to object unless it demonstrates that it would be 'injured in fact' by the allowance of the claim.' In the case of a corporation, this includes its officers, directors, and agents. So when the 'estate is insolvent, a chapter 7 debtor ordinarily lacks standing to object to proofs of claim.' But when 'there is a sufficient possibility of a surplus to give the chapter 7 debtor a pecuniary interest or when the claim involved will not be discharged[]' the chapter 7 debtor has standing.

In re Doorman Prop. Maint., 2018 WL 3041128, at *6 (B.A.P. 9th Cir. June 19, 2018) (internal citations omitted). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

The Debtor argues that it has standing to object to the Atlantic Claim because the allowance or disallowance of Atlantic's claim affects Debtor's rights because this may be a surplus estate. In the Court's view, it is premature to make any determination regarding the Debtor's standing because the estate is presently insolvent, and whether the Trustee will succeed in recovering any funds pursuant to the Avoidance Action remains unknown.

2. The Only Creditor to File a Proof of Claim was JW OKC and it is Premature for the Court to Determine Whether JW OKC has Standing

The Objecting Parties and Objectors have not demonstrated that they have standing to object to the Atlantic Claim. Pursuant to Bankruptcy Rule 3002(a), a "secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed" Fed. R. Bankr. P. 3002(a). In this case, only JW OKC filed a proof of claim. Therefore, it is the only creditor with a potential pecuniary interest that might be affected by disallowance of the Atlantic Claim. However, it is premature for the Court to determine JW OKC's standing because JW OKC's claim may be disallowed pursuant to § 502(d) if the Trustee succeeds against it in the Avoidance Action and JW OKC fails to comply with

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any turnover obligations.

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Additionally, even if the Court were to find that JW OKC has an allowed general unsecured claim, "[t]he majority of courts have ruled that, in cases where there is a bankruptcy trustee, general unsecured creditors do not have standing to object to claims of other creditors, unless the trustee has refused after request to object to the claim, and the court has then authorized the creditor to object." *T. Jones, Inc., v. Simmons (In re Simmons)*, 2005 Bankr. Lexis 2954, at *9 (B.A. P. 9th Cir. Mar. 31, 2005). JW OKC does not argue that the Trustee has refused after its request to object to the Atlantic Claim and the Court has not authorize JW OKC to file an objection on its own behalf.

Even if the Court were to consider the Trustee's e-mail response to the Objectors' counsel, the Court concludes that the Trustee did not unambiguously refuse to object. Instead, the Trustee responded that he was "not inclined to file an objection to the Atlantic Wireless claim *at this time*." See Second Atlantic Claim Objection, Jackson Decl., Ex. B (emphasis added). The Trustee's response is not a refusal to act, but rather an understandable reservation of rights given that the estate is presently insolvent and even a successful objection would not benefit creditors unless assets are recovered.

B. The Claim Objections Raise Concerns About Potential Interference with the Avoidance Action

The Court also notes that the Objecting Parties and Objectors are all defendants in the Avoidance Action and the Objecting Parties' counsel concedes that any determination made in connection with the Atlantic Claim Objection will "directly affect[] their rights in the [Avoidance Action]." Lo Decl., ¶ 4. The Court is not inclined to make any findings that might interfere with the Avoidance Action or provide the defendants some tactical advantage. Therefore, absent further order, the Court will not consider any challenge to the Atlantic Claim brought by any defendant in the Avoidance Action until that litigation has concluded.

III. Conclusion

For the reasons set forth above, the hearings on the Claim Objections are

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CONTINUED to September 25, 2019 at 10:00 a.m.

The parties are directed to file a joint status report by no later than September 11, 2019, with a brief update on the status of the Avoidance Action and New York Litigation.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Because the Court finds that the Debtor and Objecting Parties lack standing to object to the Atlantic Claim, the Court has not included a summary of the parties' substantive arguments.

Note 2: Because the Court finds that the Objectors lack standing to object to the Atlantic Claim, the Court has not included a summary of the parties' substantive arguments.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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2:16-16496 JW Wireless Inc.

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#100.10 Hearing re [43] Objection to Claim #2 by Claimant Atlantic Wireless, Inc.. in the amount of \$ \$2,000,000.00

fr: 3-20-19

Docket 0

Tentative Ruling:

4/16/2019

See Cal. No. 100 (above), incorporated herein by reference.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

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2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#101.00 HearingRE: [21] Motion to Amend Trustee's Notice of Motion and Motion for Leave to Amend Adversary Complaint; Memorandum of Points and Authorities; Declaration of Zi C. Lin **WARNING:** Correct courtroom is Courtroom 1568. See docket entry #22 for corrective action; Modified on 3/13/2019 (Evangelista, Maria).

Docket 21

Tentative Ruling:

4/16/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Trustee's Complaint for: (1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; (2) Turnover; (3) Injunctive Relief; and (4) Sale of a Property in Which a Non-Debtor Asserts an Interest [Doc. No. 1] (the "Complaint")
- 2) Trustee's Notice of Motion and Motion for Leave to Amend Adversary Complaint [Doc. No. 21] (the "Motion")
- 3) Notice of Opposition and Request for a Hearing [Doc. No. 26] (the "Opposition")
- 4) Reply in Support of Trustee's Notice of Motion and Motion for Leave to Amend Adversary Complaint [Doc. No. 29] (the "Reply")

I. Facts and Summary of Pleadings

On December 10, 2018, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; (2) Turnover; (3) Injunctive Relief; and (4) Sale of a Property in Which a Non-Debtor Asserts an Interest* [Doc. No. 1] (the "Complaint") against Jenny Melendez ("Jenny") and Clara E. Melendez ("Clara," and together with Jenny, the "Defendants"). **[Note 1]** Defendant Jenny Melendez filed a Chapter 7 bankruptcy petition on September 5, 2018, and received a discharge on January 2, 2019. The Complaint alleges that Jenny has an interest in real property located at 1225 West 123rd Street, Los Angeles, CA 90044 (the "Los Angeles Property"). The Complaint seeks a declaration that the estate holds 66.67% of the legal title to the Los Angeles Property; that Jenny's mother,

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Clara, holds bare legal title to 33.33% of the Los Angeles Property; and that the estate holds a 100% beneficial interest in the Los Angeles Property. The Complaint seeks turnover, an injunction barring Defendants from recording liens against the Los Angeles Property or interfering with the Trustee's administration thereof; and sale of the Los Angeles Property pursuant to § 363(h).

Jenny filed an Answer on March 20, 2019. Doc. No. 25. The Trustee seeks leave to file a First Amended Complaint. The proposed First Amended Complaint alleges that Jenny failed to schedule an interest in property located at 1102 South Temple Ave., Compton, CA 90221 (the "Compton Property") and that Jenny falsely testified that she had no interest in the Compton Property at the § 341(a) meeting of creditors. The proposed First Amended Complaint seeks revocation of Jenny's discharge pursuant to § 727(d)(1) and sale of the Compton Property pursuant to § 363(h). The Trustee's attempts to obtain a stipulation authorizing the filing of the First Amended Complaint were not successful.

Jenny, proceeding *in pro se*, opposes the filing of the First Amended Complaint on the ground that she has no interest in the Compton Property. In Reply, the Trustee asserts that Jenny's Opposition goes to the merits of the action and is not grounds for denying leave to amend.

II. Findings and Conclusions

On December 13, 2018, the Court issued a Scheduling Order [Doc. No. 3], which provided that the "last day to amend pleadings and/or join parties is 3/14/2019." Scheduling Order at ¶ 1(b).

Civil Rule 15(a)(2) provides that subsequent to the filing of an answer, a complaint may be amended "only with the opposing party's written consent or with the court's leave." The Court is required to "freely give leave when justice so requires." Civil Rule 15(a)(2). Civil Rule 16(b)(4) provides that the deadlines set forth in a Scheduling Order "may be modified only for good cause and with the judge's consent."

Because the Court has entered a Scheduling Order, the Trustee's request for leave to amend is governed by both Civil Rules 15 and 16. As the Ninth Circuit has held, "[o]nce the ... court has filed a pretrial scheduling order pursuant to [Civil Rule] 16 ... that rule's standards [control]" with respect to a request for leave to amend. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). Civil Rule 16's "good cause" standard "primarily considers the diligence of the party seeking the amendment. The ... court may modify the pretrial schedule 'if it cannot

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reasonably be met despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609.

If the Trustee can demonstrate “good cause” under Civil Rule 16, the Trustee must then show that amendment is also appropriate under Civil Rule 15. *See Johnson*, 975 F.2d at 609 (explaining that the “party seeking to amend [the] pleading after [the] date specified in [the] scheduling order must first show ‘good cause’ for amendment under Rule 16(b), then, if ‘good cause’ be shown, the party must demonstrate that amendment was proper under Rule 15”).

The Court finds that the Trustee has shown good cause under Civil Rule 16 to modify the Scheduling Order’s March 14, 2019 deadline to amend the pleadings. The Trustee states that he discovered the existence of the Compton Property on January 17, 2019. On February 25, 2019, the Trustee contacted Jenny’s counsel and attempted to obtain a stipulation authorizing the filing of the First Amended Complaint. After no stipulation was forthcoming, the Trustee filed the Motion seeking leave to amend on March 13, 2019. Because the Trustee promptly sought leave to amend after discovering the Compton Property, the Court finds good cause to modify the Scheduling Order.

The Court finds that leave to amend is justified under Civil Rule 15. Rule 15 requires the Court to “freely give leave when justice so requires.” However, “[l]eave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay.” *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Jenny denies that she is liable for the misconduct alleged in the proposed First Amended Complaint but does not show that she would be prejudiced by the filing of the First Amended Complaint, that the First Amended Complaint would be futile, or that the Trustee’s request for leave to amend was sought in bad faith or would create undue delay. The Court finds that none of the concerns that would support denial of leave to amend apply to this proceeding.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Trustee shall file the proposed First Amended Complaint by no later than **April 19, 2019**. Once the First Amended Complaint is filed, the Clerk of the Court will issue an updated Scheduling Order setting new litigation deadlines and the date of a continued Status Conference.

No appearance is required if submitting on the court’s tentative ruling. If you

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intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

[Note 1]

Given names are used to distinguish Jenny Melendez from her mother, Clara E. Melendez.

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Jenny Melendez, an individual

Pro Se

Clara E Melendez, an individual

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#102.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lin, Zi)

fr: 2-12-19; 4-16-19

Docket 1

Tentative Ruling:

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See Cal. No. 101, incorporated in full by reference.

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Jenny Melendez, an individual

Pro Se

Clara E Melendez, an individual

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah

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CONT... Jenny Melendez

Zi Chao Lin

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

**United States Bankruptcy Court
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Monday, April 22, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

#1.00 HearingRE: [46] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Yamaha YZFR1JCB .

Docket 46

Tentative Ruling:

4/18/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Paul A. Carrasco

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

2:19-11011 2009 Raymond LLC

Chapter 7

#2.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2009 Raymond Avenue, Los Angeles, California 90007 with Request for Extraordinary Relief Under 362 (d)(4).

Docket 13

Tentative Ruling:

4/18/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Vivian Prieto in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on the Court's determination that this is a bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after

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notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

2009 Raymond LLC

Pro Se

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2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#1.00 HearingRE: [37] Motion Plaintiff's Notice of Motion and Motion to Appoint Guardian Ad Litem; Declaration of Christian T. Kim in Support Thereof (Kim, Christian)

Docket 37

Tentative Ruling:

4/22/2019

Appearances required. The Court is prepared to appoint Herstel as Abraham's guardian ad litem, but only if Herstel can show that he has the resources to retain counsel to defend Abraham's interests.

Pleadings Filed and Reviewed:

- 1) First Amended Complaint: (1) For Breach of Oral Contract; (2) For Turnover of Property to the Estate; (3) Common Counts: Open Book Account; (4) Common Counts: Account Stated; and (5) To Avoid and Recover Fraudulent Transfers [Doc. No. 10] (the "Complaint")
- 2) Plaintiff's Notice of Motion and Motion to Appoint Guardian Ad Litem [Doc. No. 37] (the "Motion")
- 3) Opposition to Plaintiff's Motion to Appoint Guardian Ad Litem [Doc. No. 39] (the "Opposition")
 - a) Declaration of Herstel Reihanian in Support of Opposition to Plaintiff's Motion [Doc. No. 40]
 - b) Supplemental Proof of Service [Doc. No. 41]
- 4) Plaintiff's Reply to Herstel Reihanian's Opposition to Motion to Appoint Guardian Ad Litem [Doc. No. 42] (the "Reply")

I. Facts and Summary of Pleadings

On March 13, 2017, Sharp Edge Enterprises (the "Debtor") filed a voluntary Chapter 7 petition. On August 22, 2018, the Chapter 7 Trustee (the "Trustee") filed a *First Amended Complaint: (1) For Breach of Oral Contract; (2) For Turnover of Property to the Estate; (3) Common Counts: Open Book Account; (4) Common*

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Counts: Account Stated; and (5) To Avoid and Recover Fraudulent Transfers [Doc. No. 10] (the "Complaint") against Leon Reihanian ("Leon") and Abraham Reihanian ("Abraham," and together with Leon, the "Defendants"). [**Note 1**] Leon is Abraham's son.

As against Leon, the Complaint seeks to recover a \$158,890 in funds allegedly loaned by the Debtor to Leon. As against Abraham and Leon, the Complaint seeks to avoid and recover the transfer of real property (the "Property") pursuant to §§ 544(b) and 550.

On October 19, 2018, the Clerk of the Court entered Abraham's default. The Trustee now moves for the appointment of a guardian ad litem for Abraham, and states that the Motion is filed in lieu of a Motion for Default Judgment. According to the Trustee, Abraham resides at the South Marin Health and Wellness Center in Greenbrae, California. In support of the Motion, the Trustee submits a statement from Dr. Arnold Knepper, which states that Abraham suffers from "severe dementia" and would be unable to testify or appear in court. Doc. No. 37, Ex. A. The Trustee proposes that co-defendant Leon be appointed to serve as Abraham's guardian ad litem.

Herstel Reihanian opposes the appointment of Leon as Abraham's guardian ad litem. Herstel, who is Abraham's other son, states that he has been caring for Abraham for the past three years. Herstel asserts that he has a better relationship with Abraham than Leon; that he has greater knowledge of Abraham's affairs than Leon; and that as a co-defendant, Leon is conflicted and will act in his own interests rather than adequately defending Abraham's interests.

In Reply to Herstel's Opposition, the Trustee states that he is indifferent as to whether Leon or Herstel is appointed as Abraham's guardian ad litem. However, the Trustee states that Herstel had previously stated that he did not have funds to hire an attorney. The Trustee states that if Herstel is appointed as the guardian ad litem, he would be willing to stipulate to set aside the entry of default.

II. Findings and Conclusions

Civil Rule 17(c) provides in relevant part: "The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action."

As the Ninth Circuit has explained in *AT&T Mobility, LLC v. Yeager*, 143 F. Supp. 3d 1042, 1049–50 (E.D. Cal. 2015):

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A guardian ad litem ... is "[a] guardian, [usually] a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party." *Id.* "Ad litem" means "[f]or the purposes of the suit; pending the suit." *Id.*; *cf.*, *e.g.*, *Brown v. Alexander*, No. 13–01451, 2015 WL 1744331, at *7 (N.D.Cal. Apr. 15, 2015) ("[T]he rules permitting a court to appoint a guardian ad litem exist for precisely the situation in which the child's interests are best served if he or she is represented by someone other than a custodial parent or other general guardian.").

Although a guardian ad litem has more limited powers than a general guardian, the appointment of a guardian ad litem "is more than a mere formalism." *Acres*, 795 F.2d at 805. A guardian ad litem "is 'appointed as a representative of the court to act for the [ward] ..., with authority to engage counsel, file suit, and to prosecute, control and direct the litigation. As an officer of the court, the guardian ad litem has full responsibility to assist the court to secure a just, speedy and inexpensive determination of the action.' " *Noe v. True*, 507 F.2d 9, 12 (6th Cir.1974) (per curiam) (quoting *Fong Sik Leung v. Dulles*, 226 F.2d 74, 82 (9th Cir.1955) (Boltd, D.J., concurring)). "For example, notwithstanding the incompetency of a party, the guardian may make binding contracts for the retention of counsel and expert witnesses and may settle the claim on behalf of his ward." *Acres*, 795 F.2d at 805; *see also Thomas v. Humfield*, 916 F.2d 1032, 1034 (5th Cir.1990) ("The appointment of a guardian ad litem deprives the litigant of the right to control the litigation...."); *Estate of Escobedo v. City of Redwood City*, No. 03–03204, 2006 WL 571354, at *9 (N.D.Cal. Mar. 2, 2006) ("Courts vest complete control in guardians to direct, manage and control litigation subject to judicial oversight that works as a further safeguard to protect the [ward] and makes sure any compromise is fair to the [ward] and in his or her best interest.").

Yeager, 143 F.Supp.3d at 1049–50.

Based upon the uncontroverted testimony of Dr. Knepper, the Court finds that Abraham is not competent to represent himself in these proceedings. Dr. Knepper states that Abraham suffers from "severe dementia" and is not capable of appearing or testifying in court. The Court finds that appointment of a guardian ad litem is necessary to protect Abraham's interests.

The next issue is whether Leon or Herstel would be better suited to serve as Abraham's guardian ad litem. The Court declines to make any findings regarding

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whether a conflict of interest prevents Leon from serving as Abraham's guardian. Based on the fact that Herstel is familiar with Abraham's affairs and has visited him every day for the past three years, the Court finds that Herstel is better suited than Leon to serve as Abraham's guardian. However, the Court will not permit Herstel to serve as Abraham's guardian unless Herstel has sufficient resources to retain counsel. A guardian ad litem is "usually a lawyer" and "has full responsibility to assist the court to secure a just, speedy and inexpensive determination of the action." *Yeager*, 143 F.Supp.3d at 1049-50. Absent the assistance of counsel, Herstel cannot adequately fulfill his obligations as Abraham's guardian. Herstel retained counsel to oppose the appointment of Leon as guardian, but it is not clear whether Herstel has the ability to retain counsel to defend Abraham's interests in this proceeding.

Herstel shall appear to address whether he has the ability to retain counsel to represent Abraham throughout the entirety of this proceeding. If Herstel cannot demonstrate to the Court's satisfaction that he has the ability to retain counsel on Abraham's behalf, the Court is prepared to appoint Leon as Abraham's guardian. Notwithstanding Herstel's knowledge of Abraham's affairs, without the assistance of counsel he would not be able to fulfill his obligations as a guardian ad litem. Leon is presently represented by counsel.

A continued Status Conference shall be held on **June 11, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. The Trustee and Abraham's guardian shall file a stipulation to set aside Abraham's default by no later than **April 30, 2019**. Abraham shall file an Answer to the Complaint by no later than **May 14, 2019**. At the June 11, 2019 Status Conference, the Court will set a new trial date and new litigation deadlines.

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Represented By
Raymond H. Aver

DOES 1-20, inclusive

Pro Se

Abraham Reihanian, as Trustee of

Pro Se

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Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

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2:19-13104 First Option Lending International Inc.

Chapter 7

#2.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Reno Logan . (Serrano, Vera) Additional attachment(s) added on 3/21/2019 (Serrano, Vera).

Docket 1

Tentative Ruling:

4/22/2019

For the reasons set forth below, the Involuntary Petition is DISMISSED, and the Petitioning Creditors are enjoined from filing a further involuntary petition against the Alleged Debtor for a period of 180 days.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Proof of Service [Doc. No. 6]
- 3) Secured Creditor's Status Conference Statement [Doc. No. 7]

I. Facts and Summary of Pleadings

On March 21, 2019 (the "Petition Date"), Avis Copelin and Reno Logan (the "Petitioning Creditors") filed an *Involuntary Petition Against a Non-Individual* (the "Involuntary Petition"), seeking relief under Chapter 7, against First Option Lending International Inc. (the "Alleged Debtor"). According to the Involuntary Petition, the Alleged Debtor owes Copelin \$25,000 on account of a promissory note and owes Logan \$12,000 on account of a promissory note.

Secured creditors Alan S. Vertun and Jeffrey Vertun (the "Secured Creditors") request that the Involuntary Petition be dismissed with a 180-day bar against re-filing. Secured Creditors make the following arguments and representations in support of their request for dismissal:

Secured Creditors hold a first deed of trust (the "DOT") against real property located at 12131 McKinley Avenue, Los Angeles, CA 90059 (the "Property"). The DOT secures a loan to the Alleged Debtor and co-borrower Lloyd White in the

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CONT... First Option Lending International Inc.

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original principal amount of \$215,000.

The Alleged Debtor and White defaulted under the payments due under the Note secured by the DOT. Secured Creditor scheduled a nonjudicial foreclosure sale for March 26, 2019. The Involuntary Petition was filed on March 21, 2019. On the day prior to the nonjudicial foreclosure sale, Petitioning Creditor Avis Copelin notified the foreclosure trustee of the Involuntary Petition.

The Involuntary Petition should be dismissed because it was filed by only two petitioning creditors, not the three petitioning creditors required under § 303(b)(1). Further, the Involuntary Petition was not properly served upon the Alleged Debtor. According to the records of the California Secretary of State, the agent for service of process for the Alleged Debtor is Sorrento Management Group, located at 357 Van Ness Way, Torrance, CA 90501. According to the Proof of Service, the Involuntary Petition was served upon the Alleged Debtor at 4148 Sunswept Drive, Studio City, CA 91604 (the “Sunswept Drive Property”), which is not the proper address for service of process.

The Sunswept Drive Property is the same address used by Petitioning Creditor Avis Copelin for a business known as PMP Realestate Solutions, LLC. Copelin identified herself as the CEO of PMP Realestate Solutions, LLC in two Chapter 11 cases that were filed by that entity, both of which were dismissed.

Based upon the inadequate number of petitioning creditors, the lack of proper service, and the suspicious circumstances regarding the address upon which the Involuntary Petition was served, the Court should dismiss the Involuntary Petition with a 180-day bar against re-filing.

Neither the Petitioning Creditors or the Alleged Debtors have filed any response to the Secured Creditors’ request for dismissal.

II. Findings and Conclusions

Section 303(b) governs the commencement of an involuntary petition, and provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

- 1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee

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- representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
- 2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims.

Based upon the declaration of Alan S. Vertun, the Court finds that the Petitioning Creditors did not file the Involuntary Petition in good faith for the purpose of collecting upon obligations owed by the Alleged Debtor. Instead, the Petitioning Creditors and the Alleged Debtor filed the Involuntary Petition collusively, for the purpose of preventing the Secured Creditors from exercising their remedies with respect to the Property. This bad faith collusion is evidenced by the fact that the Involuntary Petition was filed only one week prior to a scheduled non-judicial foreclosure sale and by the fact that Avis Copelin, one of the Petitioning Creditors, faxed the foreclosure trustee notice of the filing on the day prior to the foreclosure sale. It is further evidenced by the fact that the Involuntary Petition was not properly served upon the Alleged Debtor. Finally, the Petitioning Creditors have failed to supply any evidence substantiating the validity of the indebtedness alleged.

Because the Involuntary Petition was filed in bad faith, the Court will enjoin the Petitioning Creditors from filing a further involuntary petition against the Alleged Debtor for a period of 180 days, pursuant to § 105 and its inherent authority. Where a debtor files a petition in bad faith, the Court may impose a bar against re-filing. *In re Mitchell*, 357 B.R. 142, 156 (Bankr. C.D. Cal. 2006). A re-filing bar is likewise appropriate where Petitioning Creditors file a petition in bad faith.

The Court will prepare and enter the order dismissing the case.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

First Option Lending International

Pro Se

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2:17-22974 Rideshare Port Management, LLC

Chapter 11

#3.00 Hearing
RE: [157] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.

fr.3-19-19; 4-2-19

Docket 157

Tentative Ruling:

4/22/2019

For the reasons set forth below, DENY approval of the Debtors' Second Amended Joint Disclosure Statement and DISMISS the Debtors' cases.

Pleadings Filed and Reviewed

1. Order on United States Trustee Motion to Dismiss or Convert Under 11 U.S.C. Section 1112(b) [Rideshare Doc. No. 142]
2. Second Amended Joint Disclosure Statement Describing Second Amended Plan of Reorganization Proposed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc. [Rideshare Doc. No. 154, Red Booth Doc. No. 161] (the "Second Amended Disclosure Statement")
3. Second Amended Joint Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management, LLC and Red Booth, Inc. [Rideshare Doc. No. 155, Red Booth Doc. No. 162] (the "Second Amended Plan")
4. Proof of Service of Second Amended Disclosure Statement and Second Amended Plan [Rideshare Doc. No. 156, Red Booth Doc. No. 163]
5. Notice of Motion and Motion for Order Authorizing and Approving: (A) the Adequacy of the Second Amended Joint Disclosure Statement Describing Second Amended Plan of Reorganization Proposed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.; (B) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices with Respect Thereto; and (C) Related Confirmation Procedures, Deadlines and Notices [Rideshare Doc. No. 157, Red Booth Doc. No. 164] (the "Motion for Approval of Second Amended

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- Disclosure Statement")
6. Notice of Hearing on Motion for Approval of Second Amended DS [Rideshare Doc. No. 158, Red Booth Doc. No. 165]
 7. Opposition to Second Amended Joint Disclosure Statement Describing Plan of Reorganization [Rideshare Doc. No. 161] (the "Creditors' Opposition")
 8. Stipulation to Continue Hearing on Debtors' Motion for Approval of Second Amended Disclosure Statement [Rideshare Doc. No. 164, Red Booth Doc. No. 173]
 9. Order Approving Stipulation to Continue Hearing on Debtors' Motion for Approval of Second Amended Disclosure Statement [Rideshare Doc. No. 165, Red Booth Doc. No. 174]
 10. Stipulation to Continue Hearing on Debtors' Motion for Order Authorizing and Approving: (A) the Adequacy of the Second Amended Joint Disclosure Statement Describing Second Amended Plan of Reorganization Proposed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.; (B) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices with Respect Thereto; and (C) Related Confirmation Procedures, Deadlines and Notices [Rideshare Doc. No. 168, Red Booth Doc. No. 177]
 11. Status Report [Rideshare Doc. No. 170, Red Booth Doc. No. 179]
 12. Order Approving Stipulation to Continue Hearing on Debtors' Motion for Order Authorizing and Approving: (A) the Adequacy of the Second Amended Joint Disclosure Statement Describing Second Amended Plan of Reorganization Proposed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.; (B) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices with Respect Thereto; and (C) Related Confirmation Procedures, Deadlines and Notices [Rideshare Doc. No. 171, Red Booth Doc. No. 180] (the "Orders Continuing Hearing")
 13. Order to Comply re Status Report [Rideshare Doc. No. 174, Red Booth Doc. No. 183] (the "Orders to Comply")
 14. Status Report [Rideshare Doc. No. 175, Red Booth Doc. No. 184]

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC ("Rideshare") and Red Booth, Inc. ("Red Booth," and together with Rideshare, the "Debtors") filed separate voluntary petitions for relief on October 23, 2017 (the "Petition Date"). On December 13, 2017 and

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Chapter 11

January 25, 2018, the Court issued orders setting a deadline of January 26, 2018 for the Debtors to file a disclosure statement and plan and March 7, 2018 as the deadline to obtain confirmation and approval of a plan of reorganization [Rideshare Doc. No. 30, Red Booth, Doc. No. 64]. On February 8, 2018, the Court entered orders granting the Debtors' requests to extend the deadlines to file disclosure statements and plans to February 9, 2018 [Rideshare Doc. No. 52, Red Booth Doc. No. 68]. On February 9, 2018, the Debtors filed a joint disclosure statement and joint plan [Rideshare Doc. Nos. 53 & 54, Red Booth Doc. Nos. 69 & 70].

At a hearing on April 5, 2018, the Court denied approval of the adequacy of the Debtors' joint disclosure statement for lack of adequate information and set a new deadline for the Debtors to file an amended joint disclosure statement and plan [Rideshare Doc. No. 76, Red Booth Doc. No. 103]. On May 11, 2018, the Debtors filed their first amended joint disclosure statement and plan [Rideshare Doc. Nos. 94 & 95, Red Booth Doc. Nos. 114 & 115].

In advance of the July 12, 2018 hearing on the adequacy of the first amended joint disclosure statement, the Court issued a tentative ruling indicating its intent to deny approval of the amended disclosure statement with prejudice and issue orders directing the debtors to show cause why their cases should not be dismissed based upon the Court's determination that the first amended joint disclosure statement lacked adequate information and the first amended joint plan was patently unconfirmable [Rideshare Doc. Nos. 114 & 124, Red Booth Doc. No. 132]. However, after hearing oral argument, the Court was persuaded not to deny the adequacy of the first amended joint disclosure statement with prejudice or to issue orders to show cause.

On November 27, 2018, the Court entered orders denying the United States Trustee's motions to dismiss the Debtors' cases and setting a March 19, 2019 deadline for the Debtors to obtain approval of a second amended joint disclosure statements [Rideshare Doc. No. 142, Red Booth Doc. No. 148]. Those orders cautioned the Debtors that the Court would dismiss their cases pursuant to § 1112(b)(4)(A) and (J) without further notice or hearing if they failed to obtain approval of a disclosure statement by the March 19, 2019 deadline. *Id.*

On January 31, 2019, the debtors filed their second amended joint disclosure

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Chapter 11

statement and plan [Rideshare Doc. Nos. 154 & 155, Red Booth Doc. Nos. 161 & 162]. The Court was subsequently persuaded to continue the March 19th hearing a number of times to allow time for the Debtors to conduct settlement negotiations with certain objecting creditors.

Most recently the Court approved a stipulation continuing the matter to April 23, 2019, but directed the Debtors to file a brief status report updating the Court on the status of the Parties' negotiations by no later than April 16, 2019 [Rideshare Doc. No. 171, Red Booth Doc. No. 180] (the "Orders Continuing Hearing").

After the Debtors failed to timely comply with the Orders Continuing Hearing, the Court issued orders directing the Debtors to file status reports by no later than April 18, 2019 at noon or the Court would impose monetary sanctions [Rideshare Doc. No. 174, Red Booth Doc. No. 183] (the "Orders to Comply"). The Debtors did not file status reports until April 18, 2019 at approximately 7:05 p.m. (PST) [Rideshare Doc. No. 175, Red Booth Doc. No. 184] (the "Status Reports"). The Debtors state that they have been waiting for a proposal from the objecting creditors that might resolve their dispute, but that as of the filing of the Status Report, they had no definitive proposal in hand. *Id.* Counsel's stated excuse for not timely complying with the Court's orders was that he did not "receive the Court's Order compelling [the] report be [sic] filed today until arriving at the office late this afternoon." *Id.*

II. Findings of Fact and Conclusions of Law

The Court finds that the Debtors' Second Amended Joint Disclosure Statement lacks adequate information. The objecting creditors have raised a number of issues concerning the adequacy of disclosure and the confirmability of the Debtors' Second Amended Joint Plan. Among other disclosure issues, the Court agrees that the proposed treatment of Class 5 creditors is confusing and does not provide adequate information for creditors in that class to make an informed decision about whether to accept or reject the Second Amended Joint Plan.

The Second Amended Joint Disclosure Statement also again fails to include the contemplated "Plan Trust Agreement." In the tentative ruling denying the adequacy of the Debtors' First Amended Joint Disclosure Statement, the Court specifically rejected the Debtors' argument that the Plan Trust Agreement need not be included at

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this stage. The Court stated:

The Court is not persuaded by the Debtors' argument that the failure to file the Plan Trust Agreement with the Amended Disclosure Statement 'does not impact any disclosure requirements.' Reply at 13. To the contrary, the omission of the Plan Trust Agreement is significant given that the Plan Trust is an important component of the Amended Plan; thus, inclusion of the Plan Trust Agreement is relevant to the decision of those claim holders who are presented with the option of participating in the Plan Trust to cast their vote for or against confirmation of the Amended Plan. Furthermore, the failure to file this document is yet further evidence of the Debtors' lack of diligence in pursuing plan confirmation.

See Rideshare Doc. No. 114, Red Booth Doc. No. 132.

Despite the Court's prior ruling, the Plan Trust Agreement was not included as an exhibit to the Second Amended Joint Disclosure Statement and will not be provided until fourteen days prior to any confirmation hearing – which means creditors will be required to vote on the Amended Joint Plan without ever having reviewed the Plan Trust Agreement. This is not adequate disclosure.

The Court also agrees that the Amended Joint Plan appears to be patently unconfirmable because it contains impermissible third-party releases of liability in violation of § 524(e). *See e.g. Resorts Int'l v. Lowenschuss*, 67 F.3d 1394, 1501 (9th Cir. 1995) ("This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors"). The Debtors have not responded with any argument or authority to persuade this Court that the releases are limited in scope or otherwise excepted from binding Ninth Circuit precedent forbidding Courts from confirming plans with such provisions.

Based on the foregoing, the Second Amended Joint Disclosure Statement is DENIED and these cases are DISMISSED pursuant to § 1112(b)(4)(A) and (J). The Court also finds that "cause" exists to dismiss these cases pursuant to § 1112(b)(4)(E) based upon the Debtors' failure to timely comply with this Court's orders directing them to file status reports.

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The Court will prepare the orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22974 Rideshare Port Management, LLC

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#4.00 Hearing
RE: [154] second amended joint disclosure statement

fr.11-13-18; fr.3-19-19; 4-2-19

Docket 129

Tentative Ruling:

4/22/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

Chapter 11

#5.00 Hearing
RE: [164] Motion for approval of chapter 11 disclosure statement Second Amended Disclosure Statement Filed Jointly by Debtors, Rideshare Port Management, LLC and Red Booth, Inc.

fr.3-19-19; fr. 4-2-19

Docket 164

Tentative Ruling:

4/22/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

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#6.00 Hearing
RE: [161] second amended joint disclosure statement

FR. 11-13-18; fr.3-19-19; 4-2-19

Docket 135

Tentative Ruling:

4/22/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:19-12760 The Sunshine Group, LLC

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#7.00 HearingRE: [16] Motion to Dismiss Case for Abuse and Notice of Motion (BNC) City of Dana Point's Motion to Dismiss Chapter 11 Case With Prejudice

Docket 16

Tentative Ruling:

4/22/2019

For the reasons set forth below, the Dismissal Motions are GRANTED and this case is dismissed with a 180-day refile bar.

Pleadings Filed and Reviewed

1. Creditor and State Court Receiver California Receivership Group's Emergency Motion to Dismiss, or in the Alternative Excuse Turnover and Confirm Exemption From Stay, or in the Alternative Shorten Time [Doc No. 13] (the "Receiver's Dismissal Motion")
2. City of Dana Point's Notice of Motion and Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 16] (the "City's Dismissal Motion")
3. City of Dana Point's Request for Judicial Notice Filed in Support of City's Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 17]
4. Jennifer Farrell's Declaration in Support of City of Dana Point's Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 18] (the "Farrell Decl.")
5. Order Setting Hearing on Receiver's Motion to Dismiss or Excuse Turnover for April 12, 2019, at 10:00 a.m. [Doc. No. 20]
6. Receiver's Certificate of Service [Doc. No. 23]
7. Debtor's Omnibus Opposition to: (1) State Court Receiver California Receivership Group's Motion to Dismiss, or in the Alternative to Excuse Turnover and Confirm Exemption From Stay; and (2) City of Dana Point's Notice of Motion and Motion to Dismiss Case with Prejudice [Doc. No. 37] (the "Debtor's Omnibus Opposition")
8. Creditor and Receiver Mark S. Adams' Reply to Debtor's Omnibus Opposition to State Court Receiver California Receivership Group's Motion to Dismiss, or, in the Alternative to Excuse Turnover and Confirm Exemption From Stay [Doc. No. 44] (the "Receiver's Reply")

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9. City of Dana Point's Reply in Support of City's Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 46] (the "City's Reply")
10. City of Dana Point's Request for Judicial Notice Filed in Support of City of Dana Point's Reply in Support of City's Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 47]
11. City of Dana Point's Objections to Evidence Offered by Sunshine Group LLC in Support of Its Opposition to the City's Motion to Dismiss Chapter 11 Case With Prejudice [Doc. No. 48] (the "City's Evidentiary Objections")

I. Facts and Summary of Pleadings

Summary of Relevant Background Facts [Note 1]

Debtor-in-possession, The Sunshine Group, LLC (the "Debtor"), filed this voluntary chapter 11 case on March 14, 2019 (the "Petition Date"). The Debtor's primary asset is commercial real property with a 28-unit motel located at 34862 Pacific Coast Highway, Capistrano Beach, CA 92624, known as the Capistrano Seaside Inn (the "Property" or "Motel"). The Debtor's schedules value the Property at \$3,000,000 [Doc. No. 1, Schedule A]. Despite its current condition, the Property is listed as a historic resource on the City of Dana Point's Historic Resource Inventory and on the California Register of Historic Resources.

In 2016, the City of Dana Point (the "City") red-tagged and closed the Motel based upon its determination that the Motel posed an immediate health and safety risk to the public and issued a notice of violation requiring the Debtor to fix the issues by December 5, 2016. In 2017, after the Debtor failed to address any of the cited issues, the City initiated an action in Orange County Superior Court (the "State Court"), bearing the caption *The City of Dana Point v. The Sunshine Group, LLC, et al*, Case No. 30-2017-00915900-CU-PT-CJC (the "Nuisance Action"). On April 25, 2017, the State Court granted the City's *ex parte* application for the appointment of a receiver, appointed California Receivership Group (the "Receiver"), and delegated the Receiver with the task of abating all public nuisance conditions existing at the Property.

In an effort to address the existing health and safety violations, the Receiver requested and was authorized to issue a certificate with a first-priority lien against the Property in the approximate amount of \$1,000,000 to fund the initial expenses for the

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remediation work. The Debtor's managing member, Dr. Ramesh Manchanda, personally funded \$998,000 of that amount to avoid encumbering the Property with a third-party lien.

The Receiver then developed a comprehensive remediation plan that would preserve the historical character of the Property, maintain the low-cost affordable accommodation status, and allow for competitive bidding on the ultimate remediation (the "Receiver's Plan"). The Receiver estimated that the total cost would be approximately \$5,000,000. The Debtor opposed the Receiver's Plan and argued that the project would be financially infeasible because the income from a restored 1940's style affordable motel could not service the approximately \$6,000,000 in debt required for the renovation. The Debtor instead argued that it should be permitted to demolish the Motel and use the adjacent parcels of land, owned by Dr. Manchada and one of Debtor's other members, to build a new luxury hotel (the "Debtor's Plan"). The Debtor also requested that the State Court terminate the receivership. After extensive briefing, the State Court overruled the Debtor's opposition, denied its request to terminate the receivership, and approved the Receiver's Plan by an order entered October 26, 2018 (the "October 26, 2018 Order").

The Debtor appealed the October 26, 2018 Order and petitioned the Third Division of the Fourth Appellate District for the California Court of Appeal (the "Court of Appeal") for a writ of supersedeas and immediate stay of the effectiveness of the order. The City and Receiver opposed the motion. The Court of Appeal granted a temporary stay of all activity other than work needed to be performed to stabilize the hillside adjacent to the Property to prevent public safety concerns posed by a possible landslide. After considering initial briefing, on December 24, 2018, the Court of Appeal dissolved the temporary stay.

In connection with the Receiver's efforts to address the dangers posed by the hillside, the Receiver sought and obtained junior loans secured by receiver certificates against the property from Glan Investment, LLC ("Glan") and Miken Construction ("Miken") somewhere in the approximate range of \$796,000 to \$1,000,000 and completed the necessary work to build a retaining wall. The Receiver has also removed debris and chemicals, stripped the Motel of all furniture and fixtures, and removed the electrical system. Accordingly, the Motel is currently a shelled-out structure.

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Due to a lack of funding, on February 4, 2019, the Receiver filed an *ex parte* application for an order subordinating Mr. Manchanda's \$1,000,000 receiver's certificate lien so that the Receiver could obtain the necessary \$4,000,000 in funding from third-party lenders to complete the Receiver's Plan. At the *ex parte* hearing, the parties negotiated a temporary resolution wherein Debtor purportedly agreed to advance a portion of the costs incurred to build the retaining wall, which prompted the State Court to continue the hearing to March 15, 2019. However, the Receiver asserts that shortly after the hearing the Debtor reneged on its agreement which forced it to scramble to ensure that contractors did not walk off the job and to file supplemental briefing in support of its subordination request. Before the State Court could re-hear the matter, the Debtor filed this bankruptcy case.

On March 29, 2019, the Receiver filed a request for its Dismissal Motion to be heard on shortened notice [Doc. No. 14]. On April 1, 2019, this Court issued an order denying that request and setting the matter for hearing on April 23, 2019, to be heard concurrently with the City's Dismissal Motion [Doc. No. 20]. The Court also excused the Receiver from any obligations to turn over the Property prior to the hearing. *Id.*

Summary of the City and Receiver's Dismissal Motions

The City seeks an order dismissing this case with a 180-day refile bar pursuant to §§ 105, 349(a), and 1112(b). The City argues that the Debtor filed this case in bad faith to interfere with the Nuisance Action and to thwart the City and Receiver's remediation efforts because it did not like the rulings of the State Court and Court of Appeal.

The City asserts that several indicia of a bad faith filing are present: (i) the Debtor's primary asset consists of the Property and the Debtor does not have any ongoing business it can reorganize; (ii) the Debtor does not have sufficient cash flow to fund a plan of reorganization or to make adequate payments to the Receiver; (iii) the longer the remediation is delayed, the greater likelihood of a substantial and continuing loss of value to the estate and the Debtor has thus far been responsible for the mismanagement of the Property and delays in remediating the Property; (iv) this is essentially a two-party dispute that can be easily resolved in the Nuisance Action; (v) the debtor does not have any "real creditors" other than the City and insiders and its

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own professionals – all of which arise out of the Nuisance Action.

The City submits that dismissal, rather than conversion, is in the best interest of the estate because the Debtor has completely abdicated its responsibility to properly maintain the safety and integrity of its only asset. The City also contends that dismissal will enable the Nuisance Action to proceed without interference and enable the Receiver to continue remediating the Property to protect the public's health and safety. The City asserts that conversion to a chapter 7 would be of no benefit to any party because a trustee would have to undertake the tasks that the Receiver is currently performing.

In the alternative, the City argues that the Court should abstain from exercising its jurisdiction over this case and dismiss it pursuant to § 305(a)(1). The City argues that, based upon the totality of circumstances, dismissal is in the best interests of the Debtor and its creditors. The City also argues that the Nuisance Action is exempt from the automatic stay pursuant to § 362(b)(4) because it is an action brought to enforce the City's police or regulatory powers.

The Receiver seeks dismissal on similar bad faith grounds. **[Note 2]** The Receiver argues that there is no legitimate reason for the parties to be before this Court and it is clear that the Debtor filed this case in an attempt to forum shop. In addition to the arguments advanced by the City, the Receiver highlights that the Debtor's Plan is impossible because the Debtor fails to address the historical character of the Property and the regulations imposed by the California Coastal Act. The Receiver highlights that on at least three occasions the State Court has denied the Debtor's request to terminate the receivership so that it can proceed with demolishing the Property. The Receiver also contends that the automatic stay does not apply pursuant to § 362(b)(4).

In the alternative, the Receiver argues that if the Court is not inclined to dismiss this case, the Court should issue an order excusing it from turning over the Property pursuant to § 543. The Receiver contends that the interests of creditors would be better served by permitting it to stay in control to complete the State Court approved remediation.

Summary of the Debtor's Omnibus Opposition

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The Debtor filed a timely omnibus opposition arguing that the Dismissal Motions should be denied because the Debtor filed this case in good faith in an effort to preserve assets of the estate and to pay its creditors in full. The Debtor argues that the City and Receiver (together, the "Moving Parties") attempt to mislead this Court into believing that the Property presents a current threat to health and safety when, in fact, those hazards have been abated. The Debtor further argues that the remaining issues center on the parties' disagreement over the future redevelopment of the Property and that under the Receiver's Plan, the Receiver will incur an unsustainable amount of secured debt against the Property that will ultimately lead to foreclosure. The Debtor also argues that the Receiver's inability to obtain normal funding demonstrates that the Receiver's Plan is not feasible. Therefore, the Debtor argues that the only party that will benefit if the redevelopment proceeds is the City because it will have the motel that it wants, and the Debtor and creditors will pay the price.

The Debtor instead asks this Court to grant its concurrently-filed motion to sell the Property under § 363, which will enable the Debtor to pay the Receiver in full and pave the way for a substantial hotel development project. The Debtor states that such a construction was in the planning stages when the City filed the Nuisance Action. The Debtor submits that its proposed sale is in the best interest of creditors because they will be paid in full and that the new development will be out of the Debtor's control and managed by experienced developers to ensure that the project is a success and does not present any future health and safety concerns.

The Debtor responds to the Moving Parties' contentions regarding the existence of indicia of bad faith as follows: (i) if approved, the Debtor's pending sale motion will permit the Debtor to reorganize by paying all claims in full; (ii) the Court should not consider whether the Debtor has the ability to make adequate payments to the Receiver because the Debtor should not be forced to fund an infeasible project that will likely result in foreclosure; (iii) this is not a typical two-party dispute, the Debtor sought bankruptcy protection in good faith to avoid continuing down a path towards a potential foreclosure and because the Receiver has accomplished its mandate to remediate existing health and safety risks; (iv) there will not be a substantial and continuing loss to the value of the estate without reasonable likelihood of rehabilitation because the Property has been remediated and no existing health and safety risks remain; (v) the Debtor does not have the precise amounts of debt owing to its creditors, but it does have creditors as a result of the Receivership's appointment

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and will be able to repay those debts in full through a sale of the Property.

The Debtor also disputes the Moving Parties' contention that it filed this case in an attempt to forum shop. Instead, the Debtor argues that it filed bankruptcy to protect assets of the estate from being burdened with \$6,000,000 in debt to the detriment of creditors because the Receiver's redevelopment plans are infeasible. The Debtor does not intend to relitigate the money already spent on abatement work and to secure the hillside and proposes to pay those costs in full through this case.

Similarly, the Debtor contends that the totality of the circumstances weighs against the Court abstaining pursuant to § 305(a). The Debtor also argues that the Nuisance Action is not excepted from the automatic stay under § 362(d)(4) because the Receiver's actions have gone beyond the auspices of health and safety and that the Receiver should be ordered to turn over the Property pursuant to § 543.

Summary of the City and Receiver's Replies

The City filed a timely reply arguing that the Debtor's unsupported claims that the nuisance conditions have been remedied are simply false and misleading. The City asserts that it is up to the State Court, not the Debtor, to determine when such conditions have been remedied and the State Court has not yet come to that conclusion. The City contends that under the applicable Dana Point Municipal Code § 6.14.002 the public nuisance has not been abated because the Motel is nothing more than a shelled-out structure that must be renovated. The City also reiterates that the State Court has considered and rejected the Debtor's proposal to demolish the Property and concluded that demolition would not further the goals of abating the substandard conditions, maintaining the property's historical character, and remaining in compliance with the Coastal Act requirements. The City argues that the Debtor should not be allowed to use this case to circumvent the State Court's rulings.

The City also highlights that the Debtor devotes significant attention to trying to convince this Court that the Receiver is incurring too many costs to remediate the Property but notes that the Receiver is acting under the express authority of the State Court. The City also argues that allowing this case to continue will further stall remediation efforts and permit the Property to fall into greater disrepair. The City also restates its position that dismissal is in the best interest of the estate and argues that

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the Debtor has waived its right to challenge this argument by failing to address it in its opposition. Furthermore, the City restates its belief that the dismissal is warranted under § 305(a).

The Receiver also filed a timely reply with similar arguments as those advanced by the City. The Receiver asserts that the Debtor has mischaracterized the existing nuisance issues and its accusations that the Receiver has exceeded his authority are without merit. The Receiver argues that the Debtor's behavior underscores why the Receiver was appointed in the first place and demonstrates that this petition was filing in a bad faith attempt to circumvent the State Court's orders. The Receiver also argues that the history of the Debtor's conduct makes clear that the Debtor has never fully appreciated the dangerous conditions it created and has allowed to continue. The Receiver states that the Property remains a nuisance and the structural deficiencies affecting the Property persist. Accordingly, the Receiver reiterates its request that the Court dismiss this case or, if it is not inclined to do so, excuse the Receiver from any turnover obligations and confirm that the Receivership is exempt from the stay so that the Receiver can complete his duties.

II. Findings of Fact and Conclusions of Law

A. Evidentiary Rulings

The City submits evidentiary objections to the declaration of Dr. Ramesh Manchanda on multiple grounds including, among others, that the testimony lacks foundation and contains legal argument and legal conclusions. For example, Dr. Manchanda testifies that: the Debtor filed the bankruptcy proceeding in good faith (¶ 1); the Receiver's actions have gone far beyond abatement to such an extreme that the Receiver is actively interfering with property of the bankruptcy estate (¶ 1), the Receiver is attempting to completely redevelop the Property by incurring an unsustainable amount of debt that will likely lead to foreclosure (¶ 1); the Receiver has already abated the health and safety concerns for which he was appointed (¶ 2); the Receiver is unable to obtain normal financing for the renovation (¶ 6), as the health and safety issues have been resolved, any further actions by the City and Receiver are not to protect health and safety of the public, but for the City's own benefit (¶ 11).

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The Court agrees that much of Dr. Manchanda's declaration contains legal conclusions and argument, not evidence. The Court also finds that Dr. Manchanda has not established his personal knowledge of the matters set forth in his declaration. Accordingly, the Court declines to strike these paragraphs, but construes them only as legal argument, not evidence.

The City also submits evidentiary objections to the declaration of attorney Deborah M. Rosenthal on multiple grounds including, among others, that Ms. Rosenthal is acting as an improper expert witness pursuant to California Rules of Professional Conduct Rule 3.7 ("Rule 3.7"), because she represents the Debtor in the Nuisance Action. Rule 3.7 provides that a "lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness" unless certain exceptions exist. However, the official comments state that the "rule applies to a trial before a jury, judge, administrative law judge or arbitrator" and "does not apply to other adversarial proceedings." The City does not cite any authority for this Court to conclude that Rule 3.7 is applicable in this bankruptcy proceeding.

Accordingly, the City's objections to the admissibility of Ms. Rosenthal's testimony are overruled (with one exception discussed below), and the Court will treat Ms. Rosenthal as an expert witness under FRE 702. In her declaration, Ms. Rosenthal states that she has been member of the College of Fellows of the American Institute of Certified Planners (AICP) since 1992 and that admission requires an average of 14-18 years of extensive experience in planning. Rosenthal Decl. at ¶ 2. Ms. Rosenthal has worked extensively with the State Historic Building Code and has represented clients before the California Coastal Commission since 1988. *Id.* at ¶¶ 3-4. Mr. Rosenthal also testifies that she visited the Property on several occasions and has reviewed the relevant pleadings, notices and reports upon which her testimony relies. *Id.* at ¶¶ 5, 11, 12-15, 18, 26-28.

Federal Rule of Evidence ("FRE") 702 provides:

- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

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- b) the testimony is based on sufficient facts or data;
- c) the testimony is the product of reliable principles and methods; and
- d) the expert has reliably applied the principles and methods to the facts of the case.

Under FRE 702, an expert may be qualified by "experience" or "training." Here, Ms. Rosenthal's declaration sufficiently establishes her qualifications to testify as an expert in the areas of commercial planning and development. Notwithstanding this finding, the Court notes that Ms. Rosenthal is the Debtor's proposed special litigation counsel in this bankruptcy proceeding. Rosenthal Decl. at ¶ 1. As such, Ms. Rosenthal has an incentive to provide testimony that will materially advance the Debtor's interests and defeat dismissal of this case. Therefore, the Court does not attribute significant weight to Ms. Rosenthal's testimony.

The City's objection to paragraph 7 of the Rosenthal Declaration is sustained. Ms. Rosenthal's testimony does not lay a proper foundation to establish that she has the requisite knowledge to testify as to the condition of the Property prior to the Receiver's appointment.

B. Cause Exists to Dismiss This Case

"Under § 1112(b)(1), a court may dismiss a Chapter 11 bankruptcy case 'for cause,' based on a finding that the petition was filed in bad faith." *Prometheus Health Imaging, Inc. v. UST – United States Tr. (In re Prometheus Health Imaging, Inc.)*, 705 F. App'x 626, 627 (9th Cir. 2017) (citing *In re Marshall*, 721 F.3d 1032, 1047 (9th Cir. 2013)); see also *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) ("Although section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal"). "While § 1112(b)(4) provides a list of what circumstances may constitute 'cause' for dismissal, the list is non-exhaustive, and 'courts may consider any factors which evidence an intent to abuse the judicial process and the purposes of the reorganization provisions,' to make the bad faith determinations." *In re Prometheus Health Imaging, Inc.*, 705 F. App'x at 627. The existence of good faith "does not depend on one factor alone, but . . . is to be judged by looking at the totality of the circumstances surrounding the case." *In re*

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WLB-RSK Venture, 296 B.R. 509, 514 (Bankr. C.D. Cal. 2003).

The Ninth Circuit Bankruptcy Appellate Panel has expanded on this concept as follows:

To determine whether a debtor has filed a petition in good faith, courts weigh a variety of circumstantial factors such as whether: (1) the debtor has only one asset; (2) the debtor has an ongoing business to reorganize; (3) there are any unsecured creditors; (4) the debtor has any cash flow or sources of income to sustain a plan of reorganization or make adequate protection payments; and (5) the case is essentially a two-party dispute capable of prompt adjudication in state court.

In re WLB-RSK, 296 B.R. at 514 (quoting *In re St. Paul Self Storage Ltd. P'Ships*, 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995)).

Additionally, courts have found bad faith to exist where the debtor has filed bankruptcy as a litigation tactic, e.g., to forum shop. *In re WLB-RSK*, 296 B.R. at 515 (citing *In re St. Paul Self Storage Ltd. P'Ships*, 185 B.R. at 583 ("[t]he timing of the petition and the unsuccessful progress in the Minnesota litigation strongly suggests Debtor's intent to use the bankruptcy code as a means to escape to a forum which it perceived to be more friendly"); *In re Siberkraus*, 253 B.R. 890, 902-03 (Bankr. C.D. Cal. 2000)). And while bankruptcy filings arising out of a two-party dispute are not per se bad faith, "[c]ourts that find bad faith based on two-party disputes do so where 'it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction.'" *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 616 (B.A.P. 9th Cir. 2014) (internal citations and emphasis omitted).

The Court finds that "cause" exists within the meaning of § 1112(b) based upon the Debtor's bad faith filing. First, the Debtor concedes that it filed this case as a litigation tactic to avoid implementation of the Receiver's Plan. See Debtor's Omnibus Opposition, p. 15, lines 7-9 ("[t]he bottom line is the bankruptcy was filed to protect Debtor's assets from an additional \$4 million in encumbrances for a redevelopment project that has nothing to do with remediating health and safety issues or a public nuisance").

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CONT... The Sunshine Group, LLC

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Second, the Court finds that this case is essentially a two-party dispute over the future development of the Property and that competing plans have already been the subject of significant argument and briefing before the State Court. The Debtor offers no legitimate reason for why this dispute cannot and should not be resolved by the State Court. Instead, the Debtor repeats arguments made to the State Court that the purpose of the Nuisance Action has been achieved – i.e. the Receiver has remediated all health and safety issues – and the Receiver should not be permitted to over-encumber the Property to the detriment of the Debtor and its alleged creditors. *See* Debtor’s Omnibus Opposition, p. 13, lines 27-28 & p. 14, lines 1-9. The City and Receiver appear to acknowledge that the immediate threats to public safety have been remediated but highlight that the Property remains a public nuisance under applicable Dana Point Municipal Code section 6.14.002.

While it is unclear whether the State Court has recently been asked to make a determination regarding the existence of nuisance conditions, the record demonstrates that the State Court has considered and rejected the Debtor’s arguments regarding the infeasibility of the Receiver’s Plan and the feasibility of its own development plans. In denying the Debtor’s request to terminate the receivership and approving the Receiver’s request for an increased certificate to fund the Receiver’s Plan, the State Court implicitly found that nuisance conditions would exist until the Receiver’s proposed rehabilitation of the Property was complete. The Debtor offers no persuasive argument for why this Court should step in to resolve this two-party dispute or substitute its judgment in place of the State Court’s.

Additionally, the Court finds that all of the factors enumerated by the Bankruptcy Appellate Panel in *In re St. Paul Self Storage Ltd. P’Ships* are present. The Debtor’s Schedules and March Monthly Operating Report confirm that the Debtor is not operating, and the Property is the only valuable asset of the estate [Doc. Nos. 1 & 43]. To the extent the Debtor has general unsecured creditors, such claims appear to have arisen solely out of the Nuisance Action and it is undisputed that this is a two-party dispute. The Court notes that the Debtor concurrently-filed a motion to approve a sale of the Property pursuant to §§ 363(b) and (f), which the Debtor argues will provide a legitimate source of funding for it to reorganize and pay all claims in full. However, the Court finds that, like the filing of this petition, the proposed sale is brought in bad faith in furtherance of the Debtor’s objective of divesting control from the Receiver and regaining control of the Property.

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All of the foregoing findings lead this Court to conclude that the Debtor filed this case in an attempt to forum shop its way into a potentially friendlier venue. The Court finds this to be an abuse of the judicial process and inconsistent with the spirit of the Bankruptcy Code. Therefore, the Court finds that the City and Receiver have established that "cause" exists within the meaning of § 1112(b) based upon the Debtor's lack of good faith in filing this case.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

In view of the pending Nuisance Action and ongoing receivership, the Court finds that dismissal is in the best interest of creditors because appointment of a bankruptcy trustee will only serve to increase costs and delay remediation efforts. Next, because this Court has determined that the Debtor filed this case in bad faith to interfere with the Nuisance Action, the Court finds cause exists to dismiss this case with a 180-day refiling bar pursuant to § 349(a). Absent such a bar, the Court is not convinced that the Debtor will not immediately re-filing a second bankruptcy petition.

Finally, because the Court finds that cause exists to dismiss this case, the Court need not determine the merits of the parties' arguments with respect to §§ 305, 362, and 543.

III. Conclusion

For the reasons set forth above, the Dismissal Motions are GRANTED and this case is dismissed with a 180-day refiling bar.

The Court will prepare the order.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Except where noted, these facts appear to be undisputed.

Note 2: The Receiver states that it seeks dismissal pursuant to § 1307, but since this is a chapter 11 proceeding, that section is inapplicable. The Court presumes that such a request was made in error due to the Receiver's unfamiliarity with bankruptcy law and notes that after the filing of its motion, the Receiver retained bankruptcy counsel to assist it in this case. Therefore, the Court will consider the Receiver's arguments in favor of dismissal within the context of the City's request for relief under § 1112(b). The Receiver also raises a number of other arguments in favor of dismissal. However, because the Court finds that dismissal is appropriate under § 1112(b), the Court need not determine whether the Receiver's other arguments have merit.

Party Information

Debtor(s):

The Sunshine Group, LLC

Represented By
Robert P Goe

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2:19-12760 The Sunshine Group, LLC

Chapter 11

#8.00 HearingRE: [13] Motion to Dismiss Debtor (Adams, Andrew)

Docket 13

Tentative Ruling:

4/22/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

The Sunshine Group, LLC

Represented By
Robert P Goe

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2:19-12760 The Sunshine Group, LLC

Chapter 11

#9.00 HearingRE: [24] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Notice of Motion and Motion for Order: (1) Approving Private Sale of An Asset of the Estate Free and Clear of Liens and Other Interests; (2) Finding BUyer is a Good Faith Purchaser; and (3) Waiving 14-Day Stay of FRBP 6004(h) Memorandum of Points and Authorities and Declarations of Dr. Ramesh Manchanda and Dr. Nirmal Kumar in Support Thereof with Proof of Service.

Docket 24

Tentative Ruling:

4/22/2019

For the reasons set forth in the Court's tentative ruling for Cal. No. 7, above, incorporated in full by reference, the tentative ruling is to DENY the Debtor's motion to sell the property pursuant to section 363.

Party Information

Debtor(s):

The Sunshine Group, LLC

Represented By
Robert P Goe

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 HearingRE: [1955] Motion to Extend Time Debtors Notice Of Motion And Second Motion For Entry Of An Order Pursuant To § 365(d)(4) Of The Bankruptcy Code Extending The Time To Assume Or Reject Unexpired Leases Of Nonresidential Real Property And Memorandum Of Points And Authorities; Declaration Of Richard Adcock In Support Thereof

Docket 1955

Tentative Ruling:

4/22/2019

The Motion was not served upon certain of the affected Lessors. By no later than April 24, 2019, the Debtors shall serve upon the Lessors notice that unless a Lessor objects, the Court intends to extend the Assumption/Rejection Deadline to June 27, 2019. If no Lessor objects, the Court will grant the Motion. In the event an objection is filed, the Court will determine whether a further hearing is required.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Second Motion for Entry of an Order Pursuant to § 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property and Memorandum of Points and Authorities [Doc. No. 1955] (the "Motion")
 - a) Executed Declaration of Richard G. Adcock in Support of [Motion] [Doc. No. 2087]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1941, 1942, 1950, 1955, 1956, 1958, 1959 and 1960 [Doc. No. 2005]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Entry of an Order Pursuant to §365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 1175]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California

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("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors' business, including office and operational space (the "Leases"). On February 19, 2019, the Court extended the Debtors' deadline to assume or reject these unexpired leases (such deadline, the "Assumption/Rejection Deadline") by 90 days, to and including March 29, 2019. Doc. No. 1579. Debtors now request that the Assumption/Rejection Deadline be extended an additional 90 days, to and including June 27, 2019. Debtors intend to obtain the consent of the lessors pursuant to § 365(d)(4)(B)(ii)'s requirement that subsequent extensions of the Assumption/Rejection Deadline be granted "only upon prior written consent of the lessor in each instance." However, Debtors request that the failure of the lessors to oppose the Motion be deemed "consent" for purposes of § 365(d)(4)(B)(ii), given the number of leases at issue.

The Official Committee of Unsecured Creditors has no objection to the Motion.

II. Findings and Conclusions

Section 365(d)(4) provides:

- (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—
- (i) the date that is 120 days after the date of the order for relief; or
 - (ii) the date of the entry of an order confirming a plan.
- (B)
- (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
 - (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

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"[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made." *Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 237 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989).

A. Notice of the Motion was Not Sufficient

As set forth in the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment* [Doc. No. 2131] (the "Assumption Notice"), the Debtors intend to assume and assign unexpired leases with the following lessors (collectively, the "Lessors"):

- 1) St. Francis Lynwood Medical Plaza, LLC;
- 2) Sunshine Capital Group;
- 3) Nantworks, LLC;
- 4) Bakersfield Land & Cattle Company, LLC;
- 5) Roman Catholic Archbishop of San Francisco;
- 6) Hopevale Properties LP; and
- 7) Huffburt Property LLC.

According to the *Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1941, 1942, 1950, 1955, 1956, 1958, 1959 and 1960* [Doc. No. 2005], with the exception of Nantworks, LLC, the Lessors were **NOT** provided notice of the Motion. [**Note 1**]

This is the Debtors' second request for an extension of the Assumption/Rejection Deadline. Pursuant to § 365(d)(4)(B)(ii), the requested extension may be granted "only upon prior written consent of the lessor in each instance." The lack of notice to the Lessors is of particular concern given the Debtors' request that the Lessors' failure to oppose the Motion be deemed to constitute consent for purposes of § 365(d)(4)(B)(ii).

The fact that the Debtors remain current on rental payments owed to the Lessors does not obviate the notice issue. It is possible that the rent under some of the leases may be at below-market rates. If that is the case, the Lessors could be prejudiced by the relief requested in the Motion. [**Note 2**]

B. Procedures Governing Adjudication of the Motion

The Court is prepared to extend the Assumption/Rejection Deadline to June 27,

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2019, provided that no Lessors object after having received proper notice of the Motion. The Court will deem a Lessor's non-opposition to constitute "consent" for purposes of § 365(d)(4)(B)(ii). Absent extension of the deadline, the Debtors will lack the ability to assume and assign any of the leases at issue to Strategic Global Management ("SGM"). This would require SGM to renegotiate the leases, making it more difficult for SGM to consummate the sale that was recently approved by the Court.

By no later than **April 24, 2019**, the Debtors shall serve upon the Lessors notice that unless a Lessor objects, the Court intends to extend the Assumption/Rejection Deadline to June 27, 2019. **[Note 3]** The notice shall be accompanied by copies of the Motion and this tentative ruling. The deadline for the Lessors to object shall be **May 8, 2019**. In the event that no objection is filed, the Debtors shall submit a declaration so attesting, accompanied by a proposed order granting the Motion. In the event that an objection is filed, the Court will determine whether a further hearing is required, and will notify the parties accordingly.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

There may be other Lessors not listed in the Assumption Notice affected by the relief requested.

Note 2

There is nothing in the record suggesting that the leases are below-market, and the Court makes no findings on this issue. But the possibility that the Lessors could be prejudiced by the relief sought makes proper notice critical.

Note 3

All Lessors affected by the relief requested must be provided notice, including Lessors (if any) not listed in the Assumption Notice.

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Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#100.00 Hearing
RE: [55] Motion to Amend (related document(s)1 Complaint) Notice Of Motion And Motion For Leave To Modify Scheduling Order To Permit Filing Of First Amended Complaint; Memorandum Of Points And Authorities; Declarations Of Thomas J. Eastmond And Linda Lee In Support with proof of service

Docket 55

***** VACATED *** REASON: CONTINUED 5-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By

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Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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2:18-19418 Eva Diaz

Chapter 7

Adv#: 2:18-01308 LENDMARK FINANCIAL SERVICES, LLC. v. Diaz

#101.00 Hearing
RE: [18] Motion for Default Judgment (MacLeod, James)

fr: 2-6-19

Docket 18

***** VACATED *** REASON: DISMISSED 3-20-19**

Tentative Ruling:

2/05/2019

The Complaint's allegations do not support entry of default judgment against the Plaintiff. Motion DENIED. By separate order, the Court will require the Plaintiff to show cause why this action should not be dismissed, for failure to state a claim upon which relief can be granted.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion for Default Judgment Under LBR 7055-1 [Doc. No. 18] (the "Motion for Default Judgment")
 - a) Complaint to Determine Dischargeability of Debt [Doc. No. 1] (the "Complaint")
- 2) No opposition to Motion is on file

I. Facts and Summary of Pleadings

Lendmark Financial Services, LLC (the "Plaintiff") commenced this dischargeability action against Eva Luz Diaz (the "Defendant") on October 1, 2018. The Complaint alleges that Defendant induced Plaintiff to extend credit by false pretenses and false representations—specifically, mis-stating her income on a loan application and using her mother's social security number on the loan application, rather than her own. The Complaint seeks a judgment that indebtedness in the amount of \$4,165.13, plus costs of \$350.00 and reasonable attorneys' fees, is non-dischargeable pursuant to § 523(a)(2)(A).

On November 28, 2018, the Clerk of the Court entered Defendant's default. Defendant personally appeared at a Status Conference conducted on January 15, 2019,

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but has not responded to the Complaint or the Motion for Default Judgment.

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). However, the Court may enter default judgment only if the Complaint sets forth allegations showing that Plaintiff is entitled to the relief requested. As set forth below, the Complaint fails to state a claim upon which relief can be granted. Upon its own motion, the Court will require Plaintiff to appear and show cause why the Complaint should not be dismissed, pursuant to Civil Rule 12(b)(6), for failure to state a claim.

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*" (emphasis added). To except from discharge indebtedness obtained by a false statement respecting a debtor's financial condition, creditors must satisfy the stricter criteria of §523(a)(2)(B). Section 523(a)(2)(B) excepts from discharge indebtedness obtained through use of a statement in writing:

- 1) that is materially false;
- 2) respecting the debtor's or an insider's financial condition;
- 3) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- 4) that the debtor caused to be made or published with intent to deceive....

§ 523(a)(2)(B).

The Supreme Court has explained the structure of §523(a)(2) as follows:

The text of § 523(a)(2) plainly heightens the bar to discharge when the fraud at issue was effectuated via a "statement respecting the debtor's financial condition." The heightened requirements, moreover, are not a shield for dishonest debtors. Rather, they reflect Congress' effort to balance the potential misuse of such statements by both debtors and creditors. As the Court has explained previously:

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“The House Report on the [Bankruptcy Reform Act of 1978] suggests that Congress wanted to moderate the burden on individuals who submitted false financial statements, not because lies about financial condition are less blameworthy than others, but because the relative equities might be affected by practices of consumer finance companies, which sometimes have encouraged such falsity by their borrowers for the very purpose of insulating their own claims from discharge.” *Field v. Mans*, 516 U.S. 59, 76–77, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995).

Specifically, as detailed in *Field*, the House Report noted that consumer finance companies frequently collected information from loan applicants in ways designed to permit the companies to later use those statements as the basis for an exception to discharge. Commonly, a loan officer would instruct a loan applicant “ ‘to list only a few or only the most important of his debts’ ” on a form with too little space to supply a complete list of debts, even though the phrase, “ ‘I have no other debts,’ ” would be printed at the bottom of the form or the applicant would be “ ‘instructed to write the phrase in his own handwriting.’ ” *Id.*, at 77, n. 13, 116 S.Ct. 437. If the debtor later filed for bankruptcy, the creditor would contend that the debtor had made misrepresentations in his loan application and the creditor would threaten litigation over excepting the debt from discharge. That threat was “often enough to induce the debtor to settle for a reduced sum,” even where the merits of the nondischargeability claim were weak. H.R. Rep. No. 95–595, p. 131 (1977).

Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1763–64, 201 L. Ed. 2d 102 (2018).

The Supreme Court has held that “a statement is ‘respecting’ a debtor’s financial condition if it has a direct relation to or impact on the debtor’s overall financial status.” *Lamar*, 138 S.Ct. at 1761. Such statements can include statements pertaining to a single asset, because a “single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor’s overall financial condition and can help indicate whether a debtor is solvent or insolvent, able to repay a given debt or not.” *Id.*

The Complaint alleges that Defendant fraudulently induced Plaintiff to extend credit by mis-stating her income on an *Application for Credit* (the “Credit

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Application”). According to the Complaint, Defendant’s representations were misleading because Defendant did not disclose “that her income fluctuated a great deal with her employer.” Complaint at ¶6.

With respect to Defendant’s alleged false representations regarding her income, the Complaint fails to state a claim upon which relief can be granted. The Complaint is brought under § 523(a)(2)(A), not under § 523(a)(2)(B). The Complaint’s allegations regarding false written representations should have been pleaded under § 523(a)(2)(B), not § 523(a)(2)(A). A statement regarding Defendant’s income clearly qualifies as a "statement regarding the debtor’s financial condition..."

Even if the Complaint had been properly brought under § 523(a)(2)(B), it would still fail to state a claim upon which relief could be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces “does not require ‘detailed factual allegations,’ ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Even if it had asserted a claim under § 523(a)(2)(B), the facts alleged are not sufficient to state a plausible claim for relief. To obtain relief under § 523(a)(2)(B), a

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creditor must allege facts showing that it "reasonably relied" upon false representations made by the debtor. Here, the Complaint alleges that Plaintiff was misled by Defendant's alleged failure to disclose large fluctuations in her monthly income. Yet the Credit Application that Plaintiff provided Defendant contains very limited space for supplying information regarding monthly income. Plaintiff's contention that it reasonably relied upon Defendant's representations regarding monthly income is severely undercut where the paperwork created by Plaintiff did not provide an opportunity for Defendant to report income fluctuations. In addition, Plaintiff does not allege any specific facts showing that its reliance upon Defendant's representations regarding her income was reasonable. For example, Plaintiff does not allege that it conducted any investigation into the stability of Defendant's income.

Section 523(a)(2)(B) was enacted to address precisely this sort of conduct by creditors. The Credit Application contains only enough space for the Defendant to list monthly gross and net income. It does not contain any space for Defendant to indicate monthly income fluctuations, or require Defendant to express monthly income in terms of a range. The Credit Application appears to have been designed to facilitate the dischargeability complaints such as that filed here.

The Complaint further alleges that Defendant supplied a false social security number. Within the context of the Credit Application, the Court finds that statements regarding a social security number qualify as a statement respecting the debtor's financial condition. The reason is that lenders require applicants for credit to supply a social security number because such information allows lenders to investigate the applicant's credit history.

The allegations regarding the false social security number likewise fail to state a claim, because the Complaint does not allege facts sufficient for the Court to find that it was plausible that Plaintiff relied upon the social security number in extending credit. First, the Complaint alleges that Plaintiff extended credit to retire previous indebtedness. The most plausible inference from the Complaint's allegations is that the Plaintiff already had some familiarity with Defendant, and extended credit on this basis, rather than on the basis of the social security number. The Complaint contains no allegations supporting an inference that Plaintiff did rely upon the social security number in extending credit. For example, the Complaint does not allege that Plaintiff ran a credit check using the social security number. A blanket, threadbare statement that Plaintiff relied upon the social security number in extending credit is not sufficient to state a claim. Plaintiff must allege specific facts rendering such an allegation plausible.

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Finally, Plaintiff alleges that it extended credit based upon Defendant's representation that she intended to repay the loan. Although not entirely clear from the Complaint, this allegation is apparently based upon the Promissory Note's standard "promise to pay" language. This allegation fails to state a claim for relief under § 523(a)(2)(A). To prevail on a § 523(a)(2)(A) claim on the grounds of false pretenses or false representations, a creditor must prove that:

- (1) the debtor made the representations;
- (2) that at the time he knew they were false;
- (3) that he made them with the intention and purpose of deceiving the creditor;
- (4) that the creditor relied on such representations; and
- (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010).

If the standard "promise to pay" language in Promissory Notes were construed as false representation sufficient to render indebtedness non-dischargeable, creditors would be able to insulate all consumer debt from discharge, rendering § 523(a)(2)(A) a nullity. To except debt from discharge, creditors must do more than show that the debtor signed a Promissory Note containing standard language. Creditors must point to specific false representations and allege facts showing that such representations were made with the intent to deceive. Here, the Complaint contains no such allegations.

Based upon the foregoing, the Court will issue an order requiring the Plaintiff to show cause why this action should not be dismissed.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Chapter 7

Debtor(s):

Eva Diaz

Pro Se

Defendant(s):

Eva Luz Diaz

Pro Se

Plaintiff(s):

LENDMARK FINANCIAL

Represented By
Donald T Dunning
James MacLeod

Trustee(s):

Wesley H Avery (TR)

Pro Se

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2:03-30563 Hugo Pimienta

Chapter 7

Adv#: 2:04-01337 Jacuzzi et al v. Pimienta

#1.00 Hearing re [73] Examination of Third Person MARIA ANTOINETA PIMIENETA re: enforcement of judgement

Docket 0

Tentative Ruling:

4/23/2019

No appearances required.

The Court deems *Examinee Maria Antonieta Pimienta's Opposition to Application and Order to Appear for Examination of Third Person Regarding Enforcement of Judgment; Request for Entry of Protective Order* [Doc. No. 76] to constitute a motion for entry of a protective order (the "Motion"). The Local Bankruptcy Rules do not contain a procedure for asserting an objection to document requests propounded in connection with an enforcement of judgment examination. The following procedures shall govern adjudication of the Motion:

- 1) Any Opposition to the Motion shall be filed by no later than **May 8, 2019**. A Reply shall be filed by no later than **May 15, 2019**.
- 2) The Motion will stand submitted as of **May 15, 2019**. In the event that a further hearing is required, the parties will be so notified.

Pimienta's counsel states that Pimienta is not available for examination on April 24, and that counsel is negotiating the date and time of a continued examination with opposing counsel. By no later than **May 8, 2019**, the parties shall submit a stipulation setting a continued examination date, accompanied by a proposed order thereon.

Party Information

Debtor(s):

Hugo Pimienta

Represented By
William H Brownstein

Defendant(s):

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CONT... **Hugo Pimienta**
Hugo Pimienta

Chapter 7

Represented By
William H Brownstein
Alberto J Campaign

Plaintiff(s):

Margarita Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campaign

John Jacuzzi Jr

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campaign

The Jacuzzi Family

Represented By
Leonard A Goldman
Richard A Illmer

James Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campaign

Patricia Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campaign

John Jacuzzi Sr

Represented By
Richard A Illmer
Alberto J Campaign

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Irving M Gross
Edward M Wolkowitz
Natella Royzman
Carmela Pagay

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CONT...

Hugo Pimienta

Howard M Ehrenberg (TR)

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10:00 AM

2:18-23782 RAYMOND FELDMAN

Chapter 7

#2.00 Hearing
RE: [15] Motion to Avoid Lien with Bosco Credit LLC

fr. 2-20-19; 3-20-19

Docket 15

Tentative Ruling:

4/23/2019

For the reasons set forth below, the Lien Avoidance Motion is GRANTED.

Pleadings Filed and Reviewed

1. Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) [Doc. No. 15] (the "Lien Avoidance Motion")
2. Opposition to Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) and Request for Hearing [Doc. No. 16] (the "Opposition")
3. Notice of Hearing on Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) [Doc. No. 18]
4. Reply to Opposition to Debtor's Motion to Avoid Lien With Bosco Credit LLC [Doc. No. 20] (the "Reply")
5. Stipulation to Continue Hearing on Debtor's Motion to Avoid Lien With Bosco Credit LLC [Doc. No. 21]
6. Order Granting Stipulation to Continue Hearing on Debtor's Motion to Avoid Lien With Bosco Credit LLC [Doc. No. 22]
7. Status Report Regarding Progress of Negotiations [Doc. No. 26]
8. Withdrawal of Opposition to Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) and Request for Hearing [Doc. No. 28] (the "Withdrawal of Opposition")
9. Status Report Regarding Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) [Doc. No. 29]

I. Facts and Summary of Pleadings

Raymond Feldman (the "Debtor") filed a voluntary petition for relief under

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CONT... RAYMOND FELDMAN

Chapter 7

chapter 7 on November 26, 2018 (the "Petition Date"). The Debtor's Schedule A identifies the Debtor's interest in real property located at 22828 Decoro Drive, Valencia, CA 91354 (the "Property"), valued at \$415,000. *See* Doc. No. 11. Debtor claimed a \$1.00 homestead exemption in the Property. *Id.*, Schedule C.

On January 16, 2019, the Debtor filed a motion to avoid the judicial lien of Bosco Credit LLC ("Bosco") secured by the Property [Doc. No. 15] (the "Lien Avoidance Motion"). Bosco initially objected and requested a hearing on the Lien Avoidance Motion, but on April 11, 2019, Bosco withdrew its opposition [Doc. Nos. 16 & 28]. Accordingly, the Debtor asks this Court to grant the Lien Avoidance Motion.

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; *see also In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the Court's review of the appraisal filed in support of the Lien Avoidance Motion, the Court finds that the Property was worth \$505,000 as of December 19, 2018. Lien Avoidance Motion, Ex. 6.A. The Debtor claimed a homestead exemption of \$1.00 pursuant to Cal. CCP § 704.140(b)(1). The sum of the Bosco lien, all other liens, and the exemption is \$1,562,652.52. Subtracting the value of the Debtor's interest in the Property (\$505,000) shows that the Bosco lien impairs

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the Debtor's exemption to the extent of \$1,057,652.52.

III. Conclusion

For the reasons set forth above, the Lien Avoidance Motion is GRANTED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

RAYMOND FELDMAN

Represented By
Giovanni Orantes

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:19-11011 2009 Raymond LLC

Chapter 7

#3.00 Show Cause HearingRE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Matthew Chen (attorney Ji Yoon Kim) . (Serrano, Vera) Additional attachment(s) added on 1/31/2019 (Serrano, Vera).

Docket 1

Tentative Ruling:

4/23/2019

For the reasons set forth below, the Involuntary Petition is DISMISSED.

Pleadings Filed and Reviewed:

- 1) Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not be Dismissed [Doc. No. 8] (the "Order to Show Cause")
 - a) Tentative Ruling Issued in Connection with Initial Status Conference [Doc. No. 7]
 - b) Notice of Order to Show Cause [Doc. No. 11]
- 2) No response to the Order to Show Cause is on file

I. Facts and Summary of Pleadings

On January 31, 2019 (the "Petition Date"), YMP Property Management, LLC ("YMP") filed an *Involuntary Petition Against a Non-Individual* (the "Involuntary Petition"), seeking relief under Chapter 7, against 2009 Raymond LLC ("Raymond"). YMP is represented by LK Professional Law Group; Raymond is represented by Jamie Jiyeon Kim.

On March 20, 2019, the Court issued an order requiring YMP to appear and show cause why the Involuntary Petition should not be dismissed. Doc. No. 8 (the "Order to Show Cause"). No response to the Order to Show Cause is on file.

II. Findings and Conclusions

The Court adopts and incorporates herein by reference the findings set forth in the Order to Show Cause and in the tentative ruling issued in connection with the Status Conference conducted on March 19, 2019 [Doc. No. 8] (the "Tentative Ruling"). For

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CONT... 2009 Raymond LLC

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the reasons set forth in the Order to Show Cause and the Tentative Ruling, the Court finds that it lacks the ability to enter an order for relief against Raymond given the bona fide dispute as to Raymond's liability. Consequently, dismissal of the Involuntary Petition is appropriate.

The Court will prepare and enter an order dismissing the Involuntary Petition.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

2009 Raymond LLC

Pro Se

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2:12-31372 First Regional Bancorp

Chapter 11

#4.00 Show Cause Hearing RE: [514] Notice to creditors (BNC-PDF) re Order Requiring The Liquidating Trustees To Appear And Show Cause Why This Case Should Not Be Closed. April 24, 2019, at 10:00 a.m., (Lomeli, Lydia R.)

Docket 514

Tentative Ruling:

4/23/2019

For the reasons set forth below, the Liquidating Trustees shall file a final accounting of the administration of estate assets (the "Final Accounting") by no later than **May 31, 2019**. Any objections to the Final Accounting by Wilmington Trust Company shall be filed by no later than **June 14, 2019**. The Court will not enter a final decree closing the case until Wilmington has had an opportunity to object to the Final Accounting.

Pleadings Filed and Reviewed:

- 1) Order Requiring the Liquidating Trustees to Appear and Show Cause Why this Case Should Not Be Closed [Doc. No. 513] (the "Order to Show Cause")
- 2) [Liquidating Trustees'] Response to the Court's Order Requiring the Liquidating Trustees to Appear and Show Cause Why this Case Should Not Be Closed [Doc. No. 519] (the "Response")
- 3) Reply of Wilmington Trust Company to Liquidating Trustees' Response to the Court's Order Requiring the Liquidating Trustees to Appear and Show Cause Why this Case Should Not Be Closed [Doc. No. 520] (the "Wilmington Opposition")
- 4) Notice of Motion and Motion in Chapter 11 Case for the Entry of A Final Decree and Order Closing Case [Doc. No. 521]

I. Facts and Summary of Pleadings

On August 23, 2013, the Court entered an order confirming the Debtor's *Second Amended Chapter 11 Liquidating Plan* (the "Plan"). See Doc. No. 257 (the "Confirmation Order"). The Plan establishing a Liquidating Trust and appointed Vikaran Ghei and Michael Zatzeff to serve as the Liquidating Trustees. Following confirmation of the Plan, the Liquidating Trustees pursued litigation in the hopes of

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recovering an approximate \$22 million refund of federal income taxes. As set forth in the Liquidating Trustee's *Ninth Post-Confirmation Status Report*, filed on March 9, 2018, that litigation came to a conclusion without any recovery for the Liquidating Trust. As a result, the Liquidating Trustees stated that they would begin winding up this bankruptcy case.

After the Court conducted several Post-Confirmation Status Conferences at which it received only minimal information regarding the Liquidating Trustee's wind-up efforts, the Court issued an *Order Requiring the Liquidating Trustees to Appear and Show Cause Why this Case Should Not Be Closed* [Doc. No. 513] (the "Order to Show Cause"). In response to the Order to Show Cause, the Liquidating Trustees state that the "case is all but fully administered," and that the only remaining tasks consist of payment of United States Trustee fees in the amount of \$650, the filing with the Court of the Liquidating Trustee's Final Report, and the filing of a motion for entry of a final decree closing the case. Response [Doc. No. 519] at ¶ 2.

On April 19, 2019, the Liquidating Trustees filed a motion seeking entry of a final decree (the "Motion for Final Decree"). In the Motion for Final Decree, the Liquidating Trustees state that "slightly more than \$20,000 remains in the Liquidating Trust, which is insufficient to pay the post-petition fees of either the accountants for the Liquidating Trust, Crowe Horwath LLP, or counsel for the Liquidating Trust, in full." Declaration of Vikaran Ghei [Doc. No. 521] at ¶ 9.

Wilmington Trust Company ("Wilmington") opposes the closing of the case. Wilmington asserts that the Debtor's estate has not been fully administered. Wilmington states that it has not received any distribution on account of its claim of approximately \$100 million. Wilmington asserts that the Liquidating Trustees have not provided sufficient information regarding the funds available for distribution to creditors:

The Liquidating Trustees are in possession of estate assets, which have not yet been distributed to creditors of the estate.... Although the *Ninth Post Confirmation Status Report* and *Tenth Post Confirmation Status Report* state that "[t]here is currently \$813,333.00 in cash available ...," it appears that this statement may have described the cash available in 2014 when the Liquidating Trustees filed their *Motion for Authority to Pay Administrative Expenses of Liquidating Trust Pursuant to Confirmed Chapter 11 Plan* ("Administrative Expense Motion") [ECF No. 373, 374]. The Court granted the Administrative Expense Motion [ECF No. 399], allowing compensation of \$114,984.71 to be

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paid to Landau Gottfried & Berger LLP and \$60,000 in fees for Liquidating Trustees. Even if these payments were made from the \$813,333.00, \$638,348.29 should have remained available for distribution. Yet, no distributions have been made to creditors. The Court should not countenance the cloak of secrecy that has pervaded this case, if not before confirmation of the Plan (*see* Wilmington's two Motions to Convert at ECF Nos. 33 and 138), then at least since the Liquidating Trustees (nonprofessional fiduciaries) purchased their trusteeship.

Wilmington Opposition at ¶ 12.

In addition, Wilmington asserts that the Liquidating Trustees should be required to explain why they did not pursue an objection to a claim asserted by the Franchise Tax Board, given that the Liquidating Trustees stated in their *Tenth Post-Confirmation Status Report* that the Liquidating Trust had valid grounds for objecting to the FTB's claim.

Wilmington requests that the Court (1) keep the case open until distributions to creditors are made and the estate is fully administered and (2) direct the Liquidating Trustees to provide a detailed accounting of the cash and other assets of the estate and how such assets were used or distributed by the Liquidating Trustees.

II. Findings and Conclusions

The Court addresses at the outset Wilmington's opposition to the closing of the case. First, the Court declines to require the Liquidating Trustees to explain their decision not to object to the claim asserted by the FTB. The Liquidating Trust Agreement, which was approved by way of the Confirmation Order, provides in relevant part:

Except as expressly set forth in this Agreement, the Trustees shall have absolute discretion to pursue or not to pursue any and all Claims and Estate Causes of Action or other matters, activities or things as it determines is in the best interests of the Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of its decision, except as such decision may constitute an act of gross negligence, willful misconduct, or fraud.

Liquidating Trust Agreement at ¶ I.D.

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Nothing in Wilmington's opposition indicates that the Liquidating Trustees' decision not to object to the FTB's claim was the result of gross negligence, willful misconduct, or fraud.

Second, as requested by Wilmington, and consistent with the Plan and Liquidating Trustee Agreement, the Court will require the Liquidating Trustees to file a final accounting of the administration of estate assets (the "Final Accounting"). The Liquidating Trust Agreement requires the filing of a Final Accounting:

[A]s soon as practicable upon termination of the Liquidating Trust, the Trustees shall submit to the Bankruptcy Court a written report including: (i) financial statements of the Liquidating Trust at the end of such calendar year or period and the receipts and disbursements of the Liquidating Trust for such period; and (ii) subject to Section VII.B, a separate statement for each Beneficiary setting forth the holder's share of items of income, gain, loss, deduction or credit (collectively, "Tax Items") and will instruct all such holders to report such items on their federal income tax returns.

Liquidating Trust Agreement at ¶ VI.A.

The Liquidating Trustees shall file the Final Accounting by no later than **May 31, 2019**. Any objections by Wilmington to the Final Accounting shall be filed by no later than **June 14, 2019**. In the event Wilmington files an objection to the Final Accounting, the Court will determine whether a hearing is required and will notify the parties accordingly. The Court will not issue a final decree closing the case until Wilmington has had an opportunity to object to the Final Accounting. However, Wilmington is advised that it does not appear to the Court that the Liquidating Trustees have been anything but diligent in their administration of estate assets. The main asset of the Liquidating Trust was a claim against the Federal Deposit Insurance Corporation, in its capacity as receiver ("FDIC-R"), for a tax refund in excess of \$22 million. After contested litigation before this Court, the District Court, and the Ninth Circuit, the Liquidating Trustees were unable to recover any of the tax refund. The absence of a recovery resulted not from malfeasance but rather from the fact that the Liquidating Trustees did not prevail in litigation that involved complicated facts and unsettled law.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur
John A Moe II

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing

RE: [1914] Motion Notice Of Motion And Motion Of (1) Waheed Wahidi For Authorization To File A Class Proof Of Claim On Behalf Of Claimants Similarly Situated, And (2) Ernesto Madrigal For Authorization To File A Class Request For Payment Of Administrative Expense On Behalf Of Claimants Similarly Situated

Docket 1914

***** VACATED *** REASON: CONTINUED 5-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [1932] Motion to Assume Lease or Executory Contract (or REJECT)
(Goldberg, Marshall)

Docket 1932

***** VACATED *** REASON: CONTINUED 6-5-19 AT 10:00 A.M.**

Tentative Ruling:

4/23/2019

Tentative Ruling:

Hearing continued per stipulation. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.10 Hearing
RE: [2025] Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for
Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly
Situated

Docket 2025

***** VACATED *** REASON: CONTINUED 5-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.20 Hearing
RE: [1980] Application for Administrative Expenses (Valentine, Cecelia)

Docket 1980

***** VACATED *** REASON: CONTINUED 5-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

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2:14-10978 Lyudmila Garayan

Chapter 7

#7.00 Hearing
RE: [38] Motion for Order Closing Bankruptcy Case with Prejudice

Docket 38

***** VACATED *** REASON: Per order entered on 4/17/2019**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lyudmila Garayan

Represented By
Richard A Avetisyan

Trustee(s):

David A Gill (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 24, 2019

Hearing Room 1568

10:00 AM

2:18-19850 Sandra Marshall and Bobbie Marshall

Chapter 7

#8.00 HearingRE: [21] Motion to Avoid Lien Property Lien with Canyon Oaks HOA

Docket 21

Tentative Ruling:

4/23/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Avoid Lien [Doc. No. 23] (the "Motion")
 - a) Notice of Hearing [Doc. No. 24]
- 2) Judgment Creditor's Opposition to Debtors' Motion to Avoid Lien Under 11 U.S.C. Section 522(f) [Doc. No. 26] (the "Opposition")
- 3) No Reply in support of the Motion is on file

I. Facts and Summary of Pleadings

On August 24, 2018, Sandra Marshall and Bobbie Marshall (the "Debtors") filed a voluntary Chapter 7 petition. Debtors received a discharge on December 3, 2018. Doc. No. 14. Pursuant to § 522(f), Debtors move to avoid a lien (the "Lien") held by the Canyon Oaks Homeowners Association (the "Creditor") that encumbers property located at 27940 Tyler Lane, #454, Santa Clarita, CA 91387 (the "Property").

Creditor opposes the Motion. Creditor makes the following arguments and representations in support of its Opposition:

Creditor is a non-profit homeowners association. Since May 1, 2008, Debtors have been delinquent in their payments of homeowners' association fees. As a result, on April 18, 2017, the Creditor recorded the Lien. On September 27, 2017, Creditor obtained a judgment for foreclosure of the Lien.

The Lien is an assessment lien that arises by operation of law pursuant to Cal. Code Civ. Proc. §§ 5660 and 5675. As such, the lien is not a "judicial lien" within the meaning of § 522(f). Instead, the Lien is a statutory lien, which is not avoidable under § 522(f). See *Koski v. Seattle First Nat'l Bank (In re Koski)*, 149 B.R. 170, 176

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CONT... Sandra Marshall and Bobbie Marshall

Chapter 7

(Bankr. D. Idaho 1992) (holding that § 522(f) applies only to judicial liens and does not permit the avoidance of statutory liens). Consequently, the Motion must be denied.

The Debtors have not filed a Reply in support of the Motion.

II. Findings and Conclusions

Section 522(f) allows a debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled," but only if the lien at issue is a "judicial lien" A "judicial lien" is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." § 101(36). By contrast, a "statutory lien" is a "lien arising solely by force of a statute on specified circumstances or conditions" § 101(53).

Statutory liens are not avoidable under § 522(f). *See, e.g., Rench v. U.S. (In re Rench)*, 129 B.R. 649, 652 (Bankr. D. Kan. 1991) ("Conspicuously absent from section 522(f) is any provision allowing the debtor to avoid statutory liens. There is no question that the tax lien which is the subject of this dispute is a statutory lien which may not be avoided under section 522(f)."); *Koski v. Seattle First Nat'l Bank (In re Koski)*, 149 B.R. 170, 176 (Bankr. D. Idaho 1992) (holding that § 522(f) applies only to judicial liens and does not permit the avoidance of statutory liens).

The Lien at issue here is created solely by force of statute, and therefore is a statutory lien which is not avoidable under § 522(f). Specifically, Cal. Code Civ. Proc. § 5675 provides that the amount of unpaid homeowners' association assessments "shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder in the county in which the separate interest is located, a notice of delinquent assessment" Here, the Lien arose after the Creditor recorded a notice of delinquent assessment pursuant to Cal. Code Civ. Proc. § 5675.

Based upon the foregoing, the Motion is DENIED. Within seven days of the hearing, Creditor shall submit an order incorporating this tentative ruling by reference. Debtors' case was reopened solely to permit the filing of the Motion. Upon entry of the order denying the Motion, the Clerk of the Court is directed to close the Debtors' case forthwith.

No appearance is required if submitting on the court's tentative ruling. If you

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 24, 2019

Hearing Room 1568

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CONT... **Sandra Marshall and Bobbie Marshall** Chapter 7

intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sandra Marshall

Represented By
Scott D Olsen

Joint Debtor(s):

Bobbie Marshall

Represented By
Scott D Olsen

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 24, 2019

Hearing Room 1568

11:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#100.00 HearingRE: [1107] Motion to compel trustee to abandon interest in property of estate
LONDON BANK ACCOUNT

Docket 1107

Tentative Ruling:

4/24/2019 (updated to reflect pleading filed by the Chapter 7 Trustee on April 23, 2019):

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Compel Trustee to Abandon Property of the Estate to Debtor Pursuant to 11 U.S.C. Section 554(b) [Doc. No. 1107] (the "Motion")
 - a) Notice of Hearing on [Motion] [Doc. No. 1115]
- 2) Opposition to Motion to Abandon Property of the Estate [Doc. No. 1111]
- 3) [Supplemental] Opposition to Motion to Abandon Property of the Estate [Doc. No. 1119]
- 4) Declaration of Robert S. Altagen in Reply to the Opposition to Motion to Abandon Property of the Estate [Doc. No. 1120] (the "Reply")
- 5) Statement Regarding Motion to Compel Trustee to Abandon Property of the Estate to Debtor Pursuant to 11 U.S.C. § 554(b) (the "Statement")

I. Facts and Summary of Pleadings

This case was transferred to the undersigned Judge on January 3, 2018. Doc. No. 1025. Prior proceedings were heard by Judges Saltzman, Carroll, and Bufford.

Jayampath P. Dharmasuriya (the "Debtor") filed a voluntary Chapter 11 petition on July 20, 2009. On September 7, 2011, Jeffrey I. Golden was appointed as the Chapter 11 Trustee. Upon the Trustee's motion, the case was converted to Chapter 7 on November 2, 2011. Jeffrey I. Golden was reappointed as the Chapter 7 Trustee (the "Trustee") on November 9, 2011.

The Debtor's Statement of Financial Affairs listed three bank accounts located in London (the "London Bank Accounts"). On December 1, 2014, the Court approved a

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 24, 2019

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11:00 AM

CONT... Jayampath P Dharmasuriya

Chapter 7

global settlement agreement (the "Settlement Agreement") between the Trustee, Donald H. Eller, Sarath and Hemanthi Gunatilake, Nalan Samarawickrema ("Samarawickrema"), Andrew Holdings, Inc. ("Andrew Holdings"), Jayani Manikkage, and the Debtor. Doc. No. 798. One of the provisions of the Settlement Agreement requires the Trustee to turnover up to \$50,000 of the funds in the London Bank Accounts (the "Funds") to Samarawickrema and Andrew Holdings.

On March 15, 2019, the Court issued an order authorizing the Trustee to distribute the Funds to Samarawickrema and Andrew Holdings. Doc. No. 1109. Although distribution of the funds had been authorized by the Settlement Agreement, the Trustee sought an additional court order because Sonali Perera, an individual involved in state court litigation with Samarawickrema and Andrew Holdings, contended that the Funds should be paid to him.

Because the London Banks refused to release the Funds given the pending bankruptcy, the Trustee elected to accept the cash equivalent of the current balances of the London Bank Accounts in lieu of the actual funds from the London Bank Accounts. On January 7, 2019, the Debtor sent the Trustee a check for \$41,307.71. Doc. No. 1120, Ex. D. On January 17, 2019, the Debtor sent the Trustee an additional check for \$2,535.55, bringing the total amount paid to the Trustee to \$43,848.26. Doc. No. 1120, Ex. E.

Based on the fact that the Trustee has been paid cash equivalent to the Funds in the London Bank Accounts, the Debtor now moves for an order compelling the Trustee to abandon the estate's interest in the London Bank Accounts, pursuant to § 554. The Debtor states that the London Banks will not release the Funds to him absent an order from the Bankruptcy Court.

Samarawickrema and Andrew Holdings (the "Objectors") oppose the Motion. The Objectors argue that the Debtor has failed to prove that the \$43,848.26 paid to the Trustee represents the full amount of the Funds in the London Bank Accounts. The Objectors note that according to schedules filed in August 2009, the London Bank Accounts contained £106,000. Based on the scheduled values, the Objectors contend that the Debtor should have paid the Trustee far more than \$43,848.26.

In Reply, the Debtor's counsel filed a declaration stating that the London Bank Accounts have been frozen since the Trustee was appointed in 2011. An exhibit attached to the Reply indicates that as of July 31, 2017, an account maintained at HSBC had a balance of £32,409.59. Doc. No. 1120, Ex. D.

The Trustee has not filed any papers in connection with the Motion.

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Los Angeles
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Hearing Room 1568

11:00 AM

CONT... Jayampath P Dharmasuriya

Chapter 7

II. Findings and Conclusions

As a preliminary matter, the Court finds that the Objectors have standing to object to the Motion. Under the Settlement Agreement, the Objectors were entitled to receive up to \$50,000 from the London Bank Accounts. The Objectors have received only \$43,848.26. Therefore, the Objectors have a pecuniary interest in ensuring that cash equivalent to the full amount of the Funds in the London Bank Accounts has been paid to the Trustee.

Turning to the merits, § 554 provides that "the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value or benefit to the estate."

Based upon the Declaration of Robert S. Altagen [Doc. No. 1120] (the "Altagen Decl.") and the exhibits attached thereto, the Court finds that the Debtor has paid to the Trustee cash equivalent to the full amount of the Funds in the London Bank Accounts. In addition, the Court finds that the London Bank Accounts have been frozen since the appointment of the Trustee on November 2, 2011.

The Opposition is premised upon a discrepancy between the amount of the Funds reflected on the Debtors' schedules, filed in 2009, and the amount paid to the Trustee. Focusing upon this discrepancy, the Objectors imply that the Debtor may not have fully accounted for the Funds. The Court finds that the accounting set forth in the Altagen Decl. is sufficient. The difference between the schedules and the accounting set forth in the Altagen Decl. does not establish that Funds have been hidden. In the Court's experience, schedules frequently contain errors.

The *Statement Regarding Motion to Compel Trustee to Abandon Property of the Estate Pursuant to 11 U.S.C. § 554(b)* [Doc. No. 1121] (the "Statement"), filed on April 23, 2019, corroborates this conclusion. According to the Statement:

[T]he Debtor's statement of financial affairs was totally incorrect as to the balances contained in the accounts. For example, the Debtor scheduled HSBC as having a balance of 53,000 pounds, when the statement from the end of 2011 showed a balance of 874.58 pounds.

Statement at 2.

Because the Debtor has paid to the Trustee cash equivalent to the full amount of the Funds in the London Bank Accounts, the estate's claim against the London Bank Accounts has been satisfied. The Motion is GRANTED and the Trustee is ordered to abandon the estate's interest in the London Bank Accounts. Within seven days of the

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CONT... Jayampath P Dharmasuriya

Chapter 7

hearing, the Debtor shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

9:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#1.00 Trial Date Set

RE: [66] Crossclaim by Ronald Peterson against Anne Lan Peterson, Brad D. Krasnoff, Chapter 7 Trustee (Ham, Yoon)

Docket 66

***** VACATED *** REASON: DISMISSED 2-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

9:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Kim, Christian)

Docket 1

***** VACATED *** REASON: CONTINUED 7-29-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Pro Se

DOES 1-20, inclusive

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud))

Docket 1

***** VACATED *** REASON: DISMISSED 4-24-19**

Tentative Ruling:

4/24/2019

Adversary dismissed pursuant to stipulation. Trial is VACATED. No appearances required.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

2:19-11175 Lawrence Martin Villalobos and Renee Rose Newell-

Chapter 7

#100.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15404 Calverton Drive, La Mirada, CA 90638 . (Ferry, Sean)

Docket 14

Tentative Ruling:

4/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$549,900 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$48,399.89. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 8.8% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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Central District of California
Los Angeles
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Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Lawrence Martin Villalobos and Renee Rose Newell- Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Lawrence Martin Villalobos

Represented By
Leslie K Kaufman

Joint Debtor(s):

Renee Rose Newell-Villalobos

Represented By
Leslie K Kaufman

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Lawrence Martin Villalobos and Renee Rose Newell-

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1545 Calendar**

Monday, April 29, 2019

Hearing Room 1545

10:00 AM

2:19-12163 Al John N. Masorong

Chapter 7

#101.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Toyota Sienna .

Docket 12

Tentative Ruling:

4/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 29, 2019

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10:00 AM

CONT... Al John N. Masorong

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Al John N. Masorong

Represented By
Sam Benevento

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#102.00 HearingRE: [1986] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Prepetition claim against Debtors prepayment deposit of \$816,900 .

Docket 1986

Tentative Ruling:

4/24/2019

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 1986] (the "Motion")
- 2) Debtor Verity Health System of California, Inc.'s Notice of Non-Opposition to Motion for Relief from the Automatic Stay Filed by Delta Dental of California [Doc. No. 2212]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Personal Property) Filed by Delta Dental of California [Doc. No. 2199]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Delta Dental of California (the "Movant") seeks stay-relief, pursuant to § 362(d) (1), to effectuate a partial setoff of prepetition claims. The Debtors consent to the relief requested in the Motion.

Pursuant to a January 1, 2012 agreement (the "Agreement"), Movant provides services to the Debtors' self-funded dental insurance plan. As part of the Agreement, the Debtors' predecessor made a prepayment deposit in the amount of \$816,900 on February 29, 2012 (the "Deposit"). As of the Petition Date, Movant has paid claims for the Debtors' employees and incurred fees for administrative services in the

**United States Bankruptcy Court
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Los Angeles
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Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

aggregate amount of approximately \$888,821.94 for which it has not been reimbursed (the "Prepetition Claim").

Movant seeks authorization to effectuate a setoff of Movant's Prepetition Claim against the Debtors' Deposit, thereby reducing the balance of Movants' general unsecured claim to \$71,921.94.

The Official Committee of Unsecured Creditors does not oppose the Motion.

II. Findings and Conclusions

Section 553(a) provides that "this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case." To permit an "orderly examination of the debtor's and creditor's rights," a creditor's setoff rights are stayed by § 362(a)(7). *Biggs v. Stovin (In re Luz Int'l, Ltd.)*, 219 B.R. 837, 841 (9th Cir. BAP 1998) (internal quotations omitted).

There is no dispute as to the setoff amount asserted by the Movant. The Motion is GRANTED pursuant to § 362(d)(1). Within seven days of the hearing, Movant shall submit an order incorporating this tentative ruling by reference. **[Note 1]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

2:19-11099 Ashley M. Espinosa

Chapter 7

#103.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Chevrolet Silverado, VIN 2GCRCREC1J1101494 . (Wang, Jennifer)

Docket 13

Tentative Ruling:

4/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Ashley M. Espinosa

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ashley M. Espinosa

Represented By
Patricia M Ashcraft

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#104.00 HearingRE: [2091] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Mary Meeko v Mark Frazke, et al, 3:18-cv-07808-SK .

Docket 2091

Tentative Ruling:

4/24/2019

No appearances required. The *Stipulation Between Verity Health System of California, Inc., Seton Medical Center, Mark Fratzke, James Jackson and Mary Meeko, Granting Mary Meeko Relief from the Automatic Stay* [Doc. No. 2224] (the "Stipulation") is APPROVED. Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

2:19-13244 Raushana Scott

Chapter 7

#105.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 749 Cory Dr. #1, Inglewood, CA 90302 .

Docket 12

Tentative Ruling:

4/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

Absent any timely opposition, the tentative ruling is to GRANT the Motion pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on March 10, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 29, 2019

Hearing Room 1568

10:00 AM

CONT... Raushana Scott

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Raushana Scott	Pro Se
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Trustee(s):

Heide Kurtz (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

2:19-12163 Al John N. Masorong

Chapter 7

#1.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 BMW 3 Series 320i Sedan 4D . (Skigin, Cheryl)

Docket 14

Tentative Ruling:

5/2/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

CONT... Al John N. Masorong

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Al John N. Masorong

Represented By
Sam Benevento

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 HearingRE: [2064] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pending Action: Princess Naope and Kehau Naope vs. St. Francis Medical Center, et al Case No. 19STCV08160 in the Los Angeles Superior Court with proof of service.

Docket 2064

Tentative Ruling:

5/2/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Francis Medical Center and Princess Naope and Kehau Naope Granting Motion for Relief from the Automatic Stay* [Doc. No. 2223] (the "Stipulation") is APPROVED. Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

2:19-11284 Eric Lamonte Jasper

Chapter 7

#3.00 HearingRE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: U 2016 JEEP WRANGLER UNLIMITED; 1C4HJWFG0GL330236 with Exhibits and Proof of Service. (Lees, Megan)

Docket 19

Tentative Ruling:

5/2/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

CONT... Eric Lamonte Jasper

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Eric Lamonte Jasper

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

#4.00 HearingRE: [50] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Ford Transit Connect, VIN NM0GS9F77J1353703 . (Wang, Jennifer)

Docket 50

Tentative Ruling:

5/2/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

CONT... Paul A. Carrasco

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#5.00 HearingRE: [53] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Sam Nguyen dba Sam Bulliion & Coin v Bahram Sendedel et al, BC706502 . Additional attachment(s) added on 4/12/2019 (Evangelista, Maria). Additional attachment(s) added on 4/12/2019 (Evangelista, Maria). Additional attachment(s) added on 4/12/2019 (Evangelista, Maria). Additional attachment(s) added on 4/12/2019 (Evangelista, Maria).

Docket 53

Tentative Ruling:

5/2/2019

The Motion is DENIED without prejudice. Movant's proofs of service [Doc. Nos. 53, 54, 56 & 57] do not reflect service on the Debtor as required by Local Bankruptcy Rule ("LBR") 4001-1(c)(1)(C)(i) or service of a "Judge's Copy" as required by LBR 5005-2(d). Movant may refile the motion with service upon the Debtor, Debtor's counsel if any and chambers, and any other interested party requiring service, in accordance with applicable local and federal rules.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 6, 2019

Hearing Room 1568

10:00 AM

CONT... Bahram Zendedel

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:16-19483 Laura Denise Banuelos and Michael Angelo Banuelos

Chapter 7

#1.00 APPLICANT: Trustee: Peter J. Mastan

Hearing re [80] and [81] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/6/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,250

Total Expenses: \$164.86

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Laura Denise Banuelos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Michael Angelo Banuelos

Represented By
Jeffrey B Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

CONT... Laura Denise Banuelos and Michael Angelo Banuelos

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:16-19483 Laura Denise Banuelos and Michael Angelo Banuelos

Chapter 7

#2.00 APPLICANT: Attorney for Trustee: Lewis Brisbois Bisgaard & Smith

Hearing re [80] and [81] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/6/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$17,810

Expenses: \$566.30

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Laura Denise Banuelos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Michael Angelo Banuelos

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

**CONT... Laura Denise Banuelos and Michael Angelo Banuelos
Jeffrey B Smith**

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:16-19483 Laura Denise Banuelos and Michael Angelo Banuelos

Chapter 7

#3.00 APPLICANT: Accountant for Trustee: SLBiggs, a Division of

Hearing re [80] and [81] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/6/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,407

Expenses: \$163.07

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Laura Denise Banuelos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Michael Angelo Banuelos

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

**CONT... Laura Denise Banuelos and Michael Angelo Banuelos
Jeffrey B Smith**

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#4.00 Hearing
RE: [54] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 54

***** VACATED *** REASON: PER ORDER ENTERED 4-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing

RE: [1977] Motion Notice of Motion and Motion For (1) Authorization To File a Class Proof of Claim on Behalf of Claimants Similarly Situated, and (2) Authorization to File a Class Request for Payment of Administrative Expense on Behalf of Claimants Similarly Situated; Memorandum of Points and Authorities (Rich, Emily)

Docket 1977

***** VACATED *** REASON: WITHDRAWAL FILED 4-2-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [1981] Motion Notice of Motion and Motion of Plaintiffs Lynn C. Morris, Hilda L. Daily and Noe Guzman for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated, Memorandum of Points and Authorities (Rich, Emily)

Docket 1981

***** VACATED *** REASON: CONTINUED 5-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#7.00 HearingRE: [220] Motion to Approve Compromise Under Rule 9019 Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Ulzheimer Defendants; Declaration of Rosendo Gonzalez in Support Of (Krieger, Jeffrey)

Docket 220

Tentative Ruling:

5/6/2019

For the reasons set forth below, the Settlement Motion is GRANTED and the Proposed Settlement is APPROVED.

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Ulzheimer Defendants [Doc. No. 220] (the "Settlement Motion")
2. Notice of Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Ulzheimer Defendants [Doc. No. 221]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") filed a voluntary chapter 11 petition on March 6, 2017 (the "Petition Date"). On May 25, 2017, the Court entered an order converting the case to a case under chapter 7 [Doc. No. 61]. Shortly thereafter, the UST appointed Rosendo Gonzalez to serve as the chapter 7 trustee (the "Trustee") and he continues to act in that capacity.

On March 5, 2019, the Trustee initiated an adversary proceeding against, among other defendants, John Ulzheimer and The Ultzheimer Group, LLC (together, the "Ultzheimer Defendants"), by filing a complaint to avoid and recover alleged fraudulent transfers pursuant to §§ 542, 544, 548, 550 (the "Complaint"). *See*

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 7, 2019

Hearing Room 1568

10:00 AM

CONT... Green Jane Inc

Chapter 7

Gonzalez v. TCG Assets, Inc. et al, Adv. Case. No. 2:19-ap-01061-ER, Doc. No. 1. As stated in the Complaint, the Trustee alleges that the Ulzheimer Defendants received a pre-petition transfer of Debtor's funds in the sum of \$30,000. Complaint, ¶ 64. The Trustee further alleges that the Ulzheimer Defendants had no contractual relationship of any kind with the Debtor and that they did not provide any service to the Debtor in consideration for the payment of \$30,000. *Id.*, ¶ 65. Therefore, the Trustee asserts that such transfer is an avoidable fraudulent transfer pursuant to §§ 544 and 548.

The Trustee and Ulzheimer Defendants now seek approval of a settlement that resolves the Trustee's claims against the Ulzheimer Defendants, in full, in exchange for their return of the \$30,000 (the "Proposed Settlement").

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. In the Ninth Circuit, courts consider the following factors in determining the fairness, reasonableness and adequacy of a proposed settlement agreement:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986).

"Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851 (B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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CONT... Green Jane Inc

Chapter 7

range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Here, the Court finds that the Proposed Settlement is adequate, fair and reasonable and in the best interest of the estate. Approval of the parties' agreement will ensure the estate recovers 100% of the Trustee's alleged fraudulent transfer claim and avoid unnecessary costs, delay, and uncertainties attendant with litigation. The Court has not received any objection to the Settlement Motion. Accordingly, pursuant to LBR 9013-1(h), the Court presumes all interested parties consent to approval of the Settlement Motion and Proposed Settlement.

III. Conclusion

For the reasons set forth above, the Settlement Motion is GRANTED and the Proposed Settlement is APPROVED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner

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C John M Melissinos
Jeffrey A Krieger

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2:18-13131 Dwight Gregory Stephens

Chapter 11

#8.00 HearingRE: [87] Motion for an Order Authorizing Debtor to Further Encumber Debtors Community Interest in his Residence, through Debtors Non-Filing Spouse Obtaining a Reverse Mortgage (with proof of service)

Docket 87

Tentative Ruling:

5/6/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion for an Order Authorizing Debtor to Further Encumber Debtor's Community Interest in His Residence Through Debtor's Non-Filing Spouse Obtaining a Reverse Mortgage [Doc. No. 87] (the "Motion")
2. Notice of Hearing on Motion for an Order Authorizing Debtor to Further Encumber Debtor's Community Interest in His Residence Through Debtor's Non-Filing Spouse Obtaining a Reverse Mortgage [Doc. No. 88]
3. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Dwight Stephens (the "Debtor"), filed this voluntary chapter 11 case on March 21, 2018. Pre-petition, the Debtor's non-filing spouse ("Mrs. Stephens") purchased real property located at 5337 S. Verdun Avenue, Los Angeles, CA 90043 (the "Property") using her separate property funds. Mrs. Stephens holds title to the Property as her sole and separate property. However, the Debtor believes that the estate holds a community property interest in the Property in the approximate amount of \$134,983.

On February 15, 2019, the Debtor filed his first amended disclosure statement [Doc. No. 74] (the "FADS") and first amended chapter 11 plan [Doc. No. 75] (the "Plan"). The Debtor proposed to fund his Plan with, among other things, \$55,000 in funds contributed by Mrs. Stephens. Mrs. Stephens intends to obtain the \$55,000

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CONT... Dwight Gregory Stephens

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contribution through a reverse mortgage on the Property.

To facilitate the reverse mortgage, the Debtor now seeks an order authorizing him to encumber the estate's community property interest in the Property with a first-priority deed of trust in favor of American Advisors Group.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. 11 U.S.C. § 363(b)(1). The Court approves the Debtor's request to encumber his community property interest in the Property to effectuate the contemplated reverse mortgage.

Based on the foregoing, the Motion is GRANTED. The Debtor shall submit a conforming proposed order, incorporating this tentative ruling, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#9.00 Hearing
RE: [55] Motion to Amend (related document(s)1 Complaint) Notice Of Motion
And Motion For Leave To Modify Scheduling Order To Permit Filing Of First
Amended Complaint; Memorandum Of Points And Authorities; Declarations Of
Thomas J. Eastmond And Linda Lee In Support with proof of service

fr. 4-23-19

Docket 55

Tentative Ruling:

5/6/2019

No appearances required. The Court has approved the parties' stipulation
continuing this hearing to **July 17, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By

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CONT... JW Wireless Inc.

Chapter 7

Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By
Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#1.00 HearingRE: [45] Motion for Turnover of Property (Issuance of Writ of Possession)
(Avery, Wesley)

Docket 45

Tentative Ruling:

5/7/2019

For the reasons set forth below, the Motion for Writ of Possession is GRANTED.

Pleadings Filed and Reviewed

1. Trustee's Notice of Motion and Motion for an Order Directing the Clerk of the Court to Issue a Writ of Possession [Doc. No. 45] (the "Motion for Writ of Possession")
2. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

A. Summary of Relevant Background Facts

Felix Anibal Diaz and Cecilia Giron Diaz (together, the "Debtors") filed this voluntary chapter 7 case on July 6, 2018. Shortly thereafter John J. Menchaca was appointed as the chapter 7 trustee (the "Trustee") and continues to serve in that capacity.

On August 28, 2018, the Trustee initiated an adversary proceeding bearing the caption *Menchaca v. Diaz et al* (Adv. Case. No. 2:18-ap-01274-ER), by filing a complaint against the Debtors. On September 5, 2018, the Trustee filed an amended complaint asserting claims for, among other things, turnover of real property located at 11119 S. Doty Avenue, Inglewood, CA 90303 APN 4033-015-024 (the "Duplex"). See Adv. Doc. No. 2. On February 15, 2019, the Court entered an order granting the Trustee's motion for default judgment and entered judgment in favor of the Trustee (the "Judgment"). Adv. Doc. Nos. 27 & 28. The Judgment states, in relevant part:

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CONT...

Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

ORDERED, ADJUDGED AND DECREED that the following real property shall be turned over and surrendered by the Debtors to the Trustee or his representative pursuant to 11 U.S.C. § 542(a) within thirty (30) days of the entry of this judgment: that duplex (the "DUPLEX") commonly known as 11119 S. Doty Avenue, Inglewood CA 90303 bearing Los Angeles County, California Assessor's Parcel Number 4033-015-024

Id.

On August 28, 2018, the Trustee also initiated an adversary proceeding bearing the caption *Menchaca v. Olivares et al* (Adv. Case No. 2:18-ap-01273-ER), by filing a complaint against the Debtors' daughter, Johanna Olivares ("Ms. Olivares"). On September 5, 2018, the Trustee filed an amended complaint asserting claims for, among other things, avoidance and recovery of the Duplex as a fraudulent transfer. *See* Adv. Doc. No. 3. On February 15, 2019, the Court entered an order granting the Trustee's motion for default judgment and entered judgment in favor of the Trustee avoiding and recovering the Duplex for the benefit of the estate. Adv. Doc. Nos. 29 & 30.

B. Summary of the Trustee's Motion for Writ of Possession

The Trustee states that the Debtors have failed to timely comply with the turnover obligations mandated by the Judgment. Accordingly, the Trustee moves for an order directing the Clerk of the Court to issue a writ of possession such that the U.S. Marshal is instructed to forcibly remove the Debtors and any other occupants from the Duplex and to deliver possession of the Duplex to the Trustee (the "Writ of Possession").

As of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Civil Rule 70, made applicable herein pursuant to Bankruptcy Rule 7070, provides that "on application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance." Fed. R. Bankr. P. 7070, Fed. R.

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Chapter 7

Civ. P. 70(d). Although Bankruptcy Rule 7070 applies to adversary proceedings, Bankruptcy Rule 9014(c) authorizes a court "at any stage in a particular matter [to] direct that one or more of the other rules in Part VII shall apply." Fed. R. Bankr. P. 9014(c). At least one court in this district has applied Bankruptcy Rule 7070 to contested matters involving turnover of real property from a debtor at the request of a chapter 7 trustee. *See In re Kerlo*, 311 B.R. 256 (Bankr. C.D. Cal. 2004). Additionally, the Court has the authority to enforce its own orders and judgments, as "necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a); *see also Kerlo*, 311 B.R. at 262 (chapter 7 trustee entitled to writ of execution to enforce turnover order).

For the reasons set forth in the Motion for Writ of Possession, the Court finds that Trustee is entitled to an order directing the Clerk of Court to issue a Writ of Possession for the Duplex.

The Trustee is directed to lodge a conforming proposed order that complies with the requirements of Local Bankruptcy Rule 7064-1 and incorporates this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

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Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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10:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#2.00 Hearing
RE: [35] Motion to Dismiss Adversary Proceeding

Docket 35

***** VACATED *** REASON: DUPLICATE OF CALENDAR NO. 3.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#3.00 Hearing
RE: [38] Motion to Dismiss Adversary Proceeding

Docket 38

***** VACATED *** REASON: CONTINUED 6-19-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:18-23311 Andrea Michel

Chapter 7

#4.00 HearingRE: [14] Motion For Contempt Against Micheal's Superstore Abaud, Inc., for Their Intentional Violation of The Bankruptcy Automatic Stay, The Rosenthal Fair Debt Collection Practices Act with Proof of Service

Docket 14

Tentative Ruling:

5/7/2019

For the reasons set forth below, the parties are directed to submit supplemental briefing as outlined below.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Contempt Against Michael's Superstore Abaud, Inc., for Their Intentional Violation of: The Bankruptcy Automatic Stay [and] the Rosenthal Fair Debt Collection Practices Act [Doc. No. 14] (the "Motion")
2. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Andrea Michel (the "Debtor") filed this voluntary chapter 7 case on November 13, 2018 (the "Petition Date"). On January 13, 2018, the chapter 7 trustee filed a Report of No. Distribution. The Debtor received her discharge by order entered February 25, 2019 [Doc. No. 10] and the Court closed her case on February 26, 2019. On March 25, 2019, the Debtor moved to reopen her case to file a motion for contempt against Michael's Superstore Abaud, Inc. ("Creditor") [Doc. No. 13], which the Court granted by order entered March 27, 2019 [Doc. No. 16].

The Debtor now moves for an award of damages against Creditor arising from alleged violations of the automatic stay and the Rosenthal Fair Debt Collection Practices Act (the "RFDCPA"). In support of the Motion, the Debtor states that Creditor was listed as an unsecured creditor in her Schedule F and therefore had notice of her bankruptcy filing. Notwithstanding such notice, the Debtor states that on December 28, 2018, while the automatic stay was still in place, Creditor filed a

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lawsuit against her in Los Angeles Superior Court (the "State Court"), Case No. 18BFSC00635, to collect approximately \$2,400 of outstanding debt from the Debtor (the "State Court Action"). The Debtor highlights that she received a discharge of Creditor's debt on February 25, 2019, and states that on March 14, 2019, her attorney sent a letter to Creditor and to the State Court to inform them that the debt had been discharged.

The Debtor contends that Creditor's actions reflect intentional, unlawful, and malicious business practices and that its conduct mandates an award of damages for its violation of the automatic stay and RFDCPA. The Debtor suggests that Creditor's actions caused her significant emotional harm because it exacerbated the anxiety and pressures inherent in the bankruptcy process and caused her to worry about going to court and having to deal with the State Court Action when the debt was no longer collectible. The Debtor therefore requests an order imposing damages for the Debtor's monetary damages, attorney's fees and costs, and punitive damages.

As of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A. Liability for Violating the Automatic Stay

1. Applicable Standard

"The automatic stay arises by operation of law upon the filing of a petition for bankruptcy and prevents creditors of the bankrupt from seeking to enforce [certain rights against] property of the estate." *In re Mellor*, 734 F.2d 1396, 1398 (9th Cir. 1984). The automatic stay preserves the status quo and is designed to protect debtors from all collection efforts while they attempt to regain their financial footing. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992). More specifically, § 362(a)(6) enjoins "any act to collect, asses, or recover a claim against the debtor that arose before the commencement of the case"

Section 362(k)(1) provides that "[a]n individual injured by any willful violation of a stay provided by [section 362] shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." In

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seeking damages for violation of the stay, a party "must prove by a preponderance of the evidence that: (1) a bankruptcy petition was filed; (2) the debtor is an individual; (3) the creditor received notice of the petition; (4) the creditor's actions were in willful violation of the stay; and (5) the debtor suffered damages." *In re Jha*, 461 B.R. 611, 616 (Bankr. N.D. Cal. 2011). A violation is "willful" if "the defendant knew of the automatic stay and . . . the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded." *Vassallo v. Naiman*, 2012 WL 691783 *2-3 (E.D. Cal. March 2, 2012) (citation omitted).

In this case, the Debtor alleges that Creditor violated § 362(a) by filing the State Court Action after the Petition Date, on December 28, 2018. The Debtor has not attached any evidence, such as a declaration or copy of the state court complaint, to substantiate her claims. [Note 1] However, the Court takes judicial notice of the State Court docket for Case No. 18BFSC00635 and finds that Creditor did in fact file a small claims complaint against the Debtor on December 28, 2018. The State Court Action docket contains the following docket notations, among others:

12/28/2018 Case assigned to Hon. Carol Rose in Department 1 Bellflower Courthouse

12/28/2018 Plaintiff's Claim and Order to Go to Small Claims Court; Filed by: MICHAEL'S SUPERSTORE ABAUD INC (Plaintiff); As to: Andrea Michel (Defendant)

02/06/2019 Proof of Service b Substituted Service; Filed by: MICHAEL'S SUPERSTORE ABAUD INC (Plaintiff); As to: ANDREA MICHEL (Defendant); Proof of Mailing Date: 01/26/2019

03/20/2019 Other – UNITED STATES BANKRUPTCY COURT; Filed by: ANDREA MICHEL (Defendant)

03/26/2019 On the Plaintiff's Claim filed by MICHAEL'S SUPERSTORE ABAUD INC on 12/28/2018, entered Order for Dismissal without prejudice as to ANDREA MICHEL

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The Court also takes judicial notice of: (a) the Debtor's Schedule F [Doc. No. 1, pp. 22 & 24], which lists Creditor at the following addresses: 909 N. Avalon Blvd., Wilmington, CA 90744 and 14502 Whittier Blvd., Whittier, CA 90605 (the "Whittier Address"); and (ii) the California Secretary of State's website, which identifies the Whittier Address as the address designated for service of process on "Abaud, Inc."

Based on the foregoing, the Court finds that Creditor is presumed to have received notice of the Debtor's bankruptcy petition and filed the State Court Action in willful violation of the automatic stay. Creditor was served with the instant Motion and has not responded with any argument to refute these findings.

2. Damages

a. Actual Damages

"The basic measure of damages for violation of the automatic stay is the amount of economic loss the debtor has suffered as the proximate result of the defendant's violation." *Achterberg v. Creditors Trade Ass'n (In re Achterberg)*, 573 B.R. 819, 833 (Bankr. E.D. Cal. 2017).

The Debtor has not identified any specific economic loss, such as lost earnings or some other out-of-pocket expenses, arising from having to defend herself in the State Court Action. Accordingly, the Court will not award any.

b. Emotional Distress Damages

Emotional distress constitutes actual damages. *Dawson v. Washington Mutual Bank, F.A. (In re Dawson)*, 390 F.3d 1139 (9th Cir. Cal. 2004). To qualify for emotional distress damages, the debtor must (1) suffer significant harm; (2) clearly establish the significant harm; and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay. *Id.* at 1149. Medical evidence of emotional distress is not required; the testimony of family members, friends, and co-workers is sufficient to establish an emotional distress claim. *Id.*

The Motion states that that the Debtor experienced anxiety and worry in response

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to Creditor's actions, but the Debtor did not attach her own declaration or any other evidence to support her request for emotional distress damages. Additionally, "[f]leeting or trivial anxiety or distress does not suffice to support an award [for emotional distress damages]; instead, an individual must suffer significant emotional harm." *In re Dawson*, 390 F.3d at 1149. Therefore, the Court finds that the Debtor has failed to establish that she clearly suffered significant emotional harm as a direct result of Creditor's violation of the automatic stay and denies her request for emotional distress damages.

c. Attorney's Fees and Costs

Congress has also provided that the "actual damages" for an individual seeking to redress a violation of the automatic stay "shall" include "costs and attorney's fees." *In re Achterberg*, 573 B.R. at 834. The costs and attorney's fees include those incurred in connection with prosecuting the action to recover the damages caused by the violation of the stay even after the violation has been abated. *Id.* (citing *America's Servicing Company v. Schwartz-Tallard (In re Schwartz Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015)).

The Debtor seeks attorney's fees and costs but has not submitted any evidence of the amount of attorney's fees and costs she has incurred. However, because it is clear that the Debtor's attorney provided services and incurred costs both in connection with the State Court Action and in bringing this Motion, the Court finds it appropriate to afford the Debtor further opportunity to supplement the record.

Therefore, by no later than **May 22, 2019**, the Debtor is directed to file and serve on Creditor a supplemental declaration from Debtor's counsel that attaches a billing statement for services performed in connection with (a) notifying Creditor and the Superior Court of the Debtor's bankruptcy filing and discharge of Creditor's debt and (b) bringing this motion. The deadline for Creditor to object to the reasonableness of the requested fees and costs is **May 29, 2019**. The Court will not entertain any argument or evidence from either party beyond the scope of the appropriate amount of attorney's fees and costs the Debtor is entitled to.

The matter will be deemed submitted as of May 29, 2019, and the Court will assess the reasonableness of attorney's fees requested without the need for further

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hearing. The Debtor is directed to lodge a proposed order concurrently with the filing of the supplemental declaration.

d. Punitive Damages

In addition to actual damages, § 362(k)(1) permits the recovery of punitive damages "in appropriate circumstances." 11 U.S.C. § 362(k)(1). "The standard for imposition of punitive damages for violation of the automatic stay is whether the violator engaged in 'egregious, intentional misconduct.'" *In re Biehl*, 2017 Bankr. LEXIS 659, at * 22 (Bankr. C.D. Cal. Mar. 13, 2017) (quoting *McHenry v. Key Bank (In re McHenry)*, 179 B.R. 165, 168 (B.A.P. 9th Cir. 1995)). "The Ninth Circuit has observed that it has 'traditionally been reluctant to grant punitive damages absent some showing of reckless or callous disregard for the law or rights of others.'" *Id.* (quoting *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224 (9th Cir. 1989)).

The Debtor has failed to show that Creditor's conduct was egregious or that it showed a callous disregard for her legal rights. For example, the Debtor does not allege that she contacted Creditor after it filed the State Court Action to request that it dismiss its claims against her and that the Creditor refused. Instead, based on this Court's review of the State Court Action docket, it appears that shortly after Debtor's Counsel sent letters to Creditor and the State Court, Creditor's claims against the Debtor were dismissed. Therefore, the Debtor's request for punitive damages is denied.

B. Violation of the Rosenthal Fair Debt Collection Practices Act

The Debtor's request for an order finding Creditor's actions to be a violation of the RFDCPA is denied. First, a claim for violation of the RFDCPA must be brought by way of an adversary proceeding pursuant to Bankruptcy Rule 7001. Second, to the extent that the Debtor premises her RFDCPA claim on violations of § 362, such claim is preempted by the exclusive remedies afforded to her by the Bankruptcy Code. *See Walls v. Wells Fargo Bank, N.A.*, 255 B.R. 38, 47 (E.D. Cal. 2000) (Dismissing claim for relief brought under Fair Debt Collection Practices Act on the basis that "Plaintiff's remedies for violations of the Bankruptcy Code lie within the Code itself").

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III. Conclusion

For the reasons set forth above, the parties are directed to submit supplemental briefing. By no later than **May 22, 2019**, the Debtor is directed to file and serve on Creditor a supplemental declaration from Debtor's counsel that attaches a billing statement for services performed in connection with (a) notifying Creditor and the Superior Court of the Debtor's bankruptcy filing and discharge of Creditor's debt and (b) bringing this motion. The deadline for Creditor to object to the reasonableness of the requested fees and costs is **May 29, 2019**. The Court will not entertain any argument or evidence from either party beyond the scope of the appropriate amount of attorney's fees and costs the Debtor is entitled to.

The matter will be deemed submitted as of May 29, 2019, and the Court will assess the reasonableness of attorney's fees requested without the need for further hearing.

The Debtor is directed to lodge a proposed order concurrently with the filing of the supplemental declaration.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: In practicing before this Court, Counsel is expected to comply with Local Bankruptcy Rule ("LBR") 9013-1(h), which requires factual contentions to be supported by declarations and other written evidence. In future, failure to comply with LBR 9013-1(h) may result in the Court denying unsupported requests for relief outright.

Party Information

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Debtor(s):

Andrea Michel

Represented By
L. Tegan Rodkey

Trustee(s):

Sam S Leslie (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [2025] Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for
Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly
Situated

fr. 4-24-19

Docket 2025

***** VACATED *** REASON: CONTINUED 5-21-19 TA 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [1914] Motion Notice Of Motion And Motion Of (1) Waheed Wahidi For Authorization To File A Class Proof Of Claim On Behalf Of Claimants Similarly Situated, And (2) Ernesto Madrigal For Authorization To File A Class Request For Payment Of Administrative Expense On Behalf Of Claimants Similarly Situated

fr. 4-24-19

Docket 1914

***** VACATED *** REASON: CONTINUED 5-21-19 TA 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [1980] Application for Administrative Expenses (Valentine, Cecelia)

FR. 4-24-19

Docket 1980

Tentative Ruling:

5/7/2019

No appearances required. The Court has approved the parties' stipulation to continue this hearing to **June 5, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 HearingRE: [2112] Motion DEBTORS' AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS' JOINT NOTICE OF MOTION AND MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 363 AND 105 AND FED. R. BANKR. P. 9019 AUTHORIZING ENTRY INTO SETTLEMENT AGREEMENT WITH ST VINCENT IPA; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RICHARD G. ADCOCK

Docket 2112

Tentative Ruling:

5/7/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' and Official Committee of Unsecured Creditors' Joint Notice of Motion and Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry into Settlement Agreement with St. Vincent IPA [Doc. No. 2112] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2105–2107, 2109–2112 and 2114 [Doc. No. 2205]
 - b) Order Approving Stipulation Continuing Hearing Regarding Application for Administrative Expenses Filed by National Labor Relations Board [Doc. No. 2107]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases.

Debtors and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtors, the "Movants") seek approval of a settlement agreement (the "Settlement Agreement") between the Debtors and St. Vincent IPA.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movants assert that the Settlement Agreement qualifies as a transaction within the Debtors' ordinary course of business, for which Court approval is not required, pursuant to § 363(c). In an abundance of caution, Movants seek approval of the Settlement Agreement pursuant to § 363(b)(1) and Bankruptcy Rule 9019. No opposition to the Motion is on file.

The Settlement Agreement

St. Vincent IPA is a group comprised of approximately 200 doctors who work at Debtor St. Vincent Medical Center ("St. Vincent"). St. Vincent IPA's patients account for between 7–10% of the patients treated at St. Vincent, and generate significant revenue. St. Vincent has been designated a Critical Vendor within the meaning of the *Final Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors* [Doc. No. 436] (the "Critical Vendor Order").

St. Vincent IPA and the Debtors are parties to a *Healthcare Services Risk Sharing Agreement* dated January 1, 2002 (the "Risk Pool Agreement"). Under the Risk Pool Agreement, St. Vincent receives periodic payments in exchange for sharing certain risks.

The material terms of the Settlement Agreement are as follows:

- 1) Debtors will pay St. Vincent IPA \$596,816 on account of services provided by St. Vincent to the Debtors for the year 2017 (the "Prepetition Claim"). The Settlement Agreement is without prejudice to St. Vincent's ability to assert a higher prepetition claim in the future.
- 2) In consideration of the payment of the Prepetition Claim, St. Vincent will forbear from filing a motion (a) seeking stay-relief to deem the Risk Pool Agreement breached and (b) seeking authorization to terminate the Risk Pool Agreement.
- 3) Debtors have wired St. Vincent IPA an additional \$300,000 as post-petition compensation due under the Risk Pool Agreement. The \$300,000 payment is subject to adjustment following a true up (the "True Up").
- 4) For months subsequent to October 2018 until a sale of St. Vincent has closed, the Debtors shall make interim monthly payments of \$150,000 to St. Vincent IPA pursuant to the Risk Pool Agreement. The payments are subject to the True Up.
- 5) St. Vincent IPA shall continue to supply goods and services to the Debtors

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

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CONT... Verity Health System of California, Inc.

Chapter 11

in accordance with customary trade terms, and the Debtors shall continue to pay St. Vincent for such goods and services in accordance with customary trade terms.

II. Findings and Conclusions

Section 363(c)(1) authorizes the Debtors to enter into transactions in the ordinary course of business without notice or hearing or Court approval. The Ninth Circuit applies two tests to determine whether a transaction has been conducted in the ordinary course of business: the “horizontal” test and the “vertical” or “creditor’s expectation” test. *See Burlington Northern Railroad Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.)*, 853 F.2d 700, 704 (9th Cir. 1988). The horizontal test “may be described as involving an industry-wide perspective in which the debtor’s business is compared to other like businesses. In this comparison, the test is whether the postpetition transaction is of a type that other similar businesses would engage in as ordinary business.” *Id.* The vertical or creditor’s expectation test “views the disputed transaction ‘from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit.’” *Id.* (internal citation omitted).

Here, both the horizontal and vertical tests are satisfied. The horizontal test is satisfied because risk sharing agreements between doctors and hospitals are common in the healthcare industry. Declaration of Richard G. Adcock [Doc. No. 2112] at ¶ 12. The vertical test is satisfied because the Settlement Agreement involves amendments to the Risk Pool Agreement, which the Debtors entered into prepetition. A hypothetical creditor would reasonably expect the Debtors to continue to enter into transactions involving the pooling and mitigation of risk subsequent to the Petition Date. Because both the horizontal and vertical tests are satisfied, the Settlement Agreement qualifies as a transaction in the ordinary course of business for which Court approval is not required.

Even if the Settlement Agreement did not qualify as an ordinary course transaction, the Court finds that approval of the Settlement Agreement under § 363(b)(1) and Bankruptcy Rule 9019 is appropriate. Section 363(b) permits the debtor or trustee to use estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the use of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient “depends on the case,” in view of “all salient factors

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

pertaining to the proceeding." *Id.* To the extent the Settlement Agreement involves the use of estate property, the Debtors have articulated sufficient business justification in support thereof. The Settlement Agreement permits the Debtors to maintain a risk sharing program with St. Vincent IPA until the sale of St. Vincent has closed. The risk sharing program enables the Debtors to efficiently operate St. Vincent pending closing of the sale.

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). To the extent that the Settlement Agreement can be characterized as a compromise, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits and Complexity of the Litigation

These factors weigh in favor of approving the Settlement Agreement. Litigation of the issues resolved by the Settlement Agreement would involve disputes over complex calculations used to determine amounts owed under the Risk Pool Agreement. Such fact-intensive litigation would be time-consuming and expensive. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

Committee supports the Settlement Agreement, and no creditors have objected to the Settlement Agreement.

Difficulties to be Encountered in the Matter of Collection

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement contains a True Up mechanism that allows for a resolution of overpayments and underpayments. Absent the Settlement Agreement, St. Vincent IPA and the Debtors might be required to litigate payment disputes.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, Movants shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.10 Hearing

RE: [1981] Motion Notice of Motion and Motion of Plaintiffs Lynn C. Morris, Hilda L. Daily and Noe Guzman for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated, Memorandum of Points and Authorities (Rich, Emily)

FR. 5-7-19

Docket 1981

***** VACATED *** REASON: CONTINUED 5-21-19 TA 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

10:00 AM

2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#9.00 Hearing
RE: [11] Motion to Dismiss Adversary Proceeding Notice Of Motion And Defendant's Motion For An Order Dismissing All Three Claims For Relief Asserted By Plaintiff Based On Failure To State A Claim Upon Which Relief Can Be Granted And Failure To Plead Fraud With Particularity, Or, In The Alternative, For A More Definite Statement; Memorandum Of Points And Authorities (Reeder, David)

Docket 11

*** VACATED *** REASON: CONTINUED 5-15-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#100.00 Hearing re [28] *Creditor Ball C M, Inc's Notice Of Objection To Claim Of Retirement Exemption And Objection To Retirement Exemption Claim;*

Docket 0

Tentative Ruling:

5/7/2019

For the reasons set forth below, the Objection to Retirement Exemption is DENIED.

Pleadings Filed and Reviewed

1. Creditor Ball C M, Inc's Notice of Objection to Claim of Retirement Exemption and Objection to Retirement Exemption Claim [Doc. No. 28] (the "Objection to Retirement Exemption")
2. Opposition of Debtor to Creditor Ball C M Inc.'s Objection to Retirement Exemption Claim [Doc. No. 32] ("Opposition")
3. Stipulation by and Between Creditor and Debtor to: 1) Continue Hearing on Creditor's Objection to Homestead Exemption and Retirement Exemption; 2) Extend Opposition and Reply Deadlines; 3) Perfect Service on Debtor Pursuant to Local Bankruptcy Rule [Doc. No. 33]
4. Order Approving Stipulation by and Between Creditor and Debtor to: 1) Continue Hearing on Creditor's Objection to Homestead Exemption and Retirement Exemption; 2) Extend Opposition and Reply Deadlines; 3) Perfect Service on Debtor Pursuant to Local Bankruptcy Rule [Doc. No. 35]
5. Notice of Continued Hearing and Supplemental Proof of Service of Notice of Objections and Objections to Claim of Exemptions in Homestead and Retirement on Debtor Pursuant to LBR (With New Date of Hearings Below) [Doc. No. 38]
6. Creditor Ball C M Inc's Reply to Opposition to Object to Claim of Exemption [Doc. No. 40] (the "Reply")

I. Facts and Summary of Pleadings

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, May 8, 2019

Hearing Room 1568

11:00 AM

CONT...

Neilla M Cenci

Chapter 7

Neilla M. Cenci (the "Debtor") filed this voluntary chapter 7 case on December 6, 2018 (the "Petition Date"). On Schedule B, the Debtor identified her interest in a 401(k) account with "Paychex Retirement Services" with a value of \$234,419.24 (the "Retirement Account") [Doc. No. 1, Sch. B]. **[Note 1]** Debtor claimed the entire Retirement Account as exempt pursuant to California Code of Civil Procedure ("CCP") § 704.115(a)(3), (b), (e) [Doc. No. 1, Sch. C] (the "Retirement Exemption").

The Debtor's former employer, Ball CM, Inc. ("Movant"), objects to the Debtor's Retirement Exemption and seeks an order (1) directing the Debtor not to modify, hypothecate, or otherwise dispose of the Retirement Account until further order of the Court, and (2) directing the Retirement Account Trustee to maintain an administrative freeze on the Debtor's Retirement Account until further notice. In support of its request, Movant attached the declaration of Movant's president, James Christopher Ball (the "Ball Decl."). Mr. Ball testifies as follows:

- The Debtor worked as a bookkeeper for Movant from approximately February 28, 2005 through September 6, 2018. Ball Decl., ¶ 3.
- In 2018, the IRS conducted an audit of Movant's 2015 tax return, which revealed that the Debtor created and perpetrated a fraudulent scheme of misappropriating, embezzling, converting and/or diverting funds from Movant's bank account to pay for her own personal expenses. *Id.*, ¶ 8.
- Over the course of the Debtor's employment, the Debtor forged at least 1,081 checks. *Id.*, ¶ 5, Ex. A.
- Mr. Ball reported the Debtor's theft to the Los Angeles County Sheriff's department and on September 6, 2018, the Debtor was arrested and charged with twenty counts of felony check forgery and theft. *Id.*, ¶¶ 11-12.
- Based on Mr. Ball's ongoing investigation, it appears the Debtor misappropriated, embezzled, converted and/or diverted at least \$1,618,388.47 in funds from Movant. *Id.*, ¶ 18.
- Mr. Ball is the plan trustee of the Ball CM 401k plan that is administered by Paychex. Mr. Ball is currently investigating whether the Debtor stole from the 401k plan, including from her fellow employees. *Id.*, ¶ 19.
- On October 22, 2018, the Debtor left Mr. Ball a voice message stating her intent to roll her 401k over to a Wells Fargo IRA. *Id.*, ¶ 22.
- As a result of the Debtor's theft, Movant did not pay taxes on that revenue.

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Los Angeles
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Wednesday, May 8, 2019

Hearing Room 1568

11:00 AM

CONT...

Neilla M Cenci

Chapter 7

Mr. Ball believes that the IRS has the legal authority to place a tax lien on the Debtor's 401k account. *Id.*, at ¶ 23.

- Movant needs more time to complete and audit and for the IRS to act, so Mr. Ball would like his administrative freeze on the Debtor's 401k to continue. *Id.*, at ¶¶ 23-24.

On February 27, 2019, the Debtor timely opposed the Objection to Retirement Exemption arguing that the relief Movant seeks is prohibited by the Supreme Court's decision in *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365, 110 S. Ct. 680 (1990), which the Debtor contends prohibits the imposition of a constructive trust to freeze 401(k) assets for the purpose of satisfying a judgment against an embezzling employee. Therefore, the Debtor argues that Movant is wrongfully withholding the funds in the Retirement Account and should be ordered to immediately release the funds to the Debtor.

In reply, Movant argues that it has not improperly alienated the funds in the Retirement Account, but instead has instituted a freeze to maintain the status quo until the disposition of the funds can be adjudicated. Movant also argues that the cases the Debtor relies on are distinguishable because they involved defined benefit pension plans and not 401(k) type retirement accounts. Moreover, Movant is convinced from its own investigation that there will be a successful criminal prosecution of the Debtor, which could result in the Debtor being ordered to pay restitution, although it is too soon to know if this will occur.

II. Findings of Fact and Conclusions of Law

A. Movant Has Not Established A Proper Basis to Disallow Debtor's Retirement Exemption

A claimed exemption is "presumptively valid." *In re Diener*, 483 B.R. 196, 203 (B.A.P. 9th Cir. 2012) (citing *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)). Once an exemption has been claimed, it is the objecting party's burden to prove by a preponderance of the evidence that the exemption is not properly claimed. *Id.* (citing Fed. R. Bankr. P. 4003(c)); *In re Kelley*, 300 B.R. 11, 17 (B.A.P. 9th Cir. 2003). Initially, this means that the objecting party has the burden of production and the burden of persuasion. *In re Carter*, 182 F.3d at 1029 n.3. The

**United States Bankruptcy Court
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Wednesday, May 8, 2019

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CONT... Neilla M Cenci

Chapter 7

objecting party must produce evidence to rebut the presumptively valid exemption. *Id.* If the objecting party can produce evidence to rebut the exemption, the burden of production then shifts to the debtor to come forward with unequivocal evidence to demonstrate that the exemption is proper. *Id.* The burden of persuasion, however, always remains with the objecting party. *Id.*

Movant appears to argue that the Debtor's Retirement Account exemption should be disallowed based on the Debtor's alleged fraudulent conduct. However, the authority Movant cites is no longer good law following the Supreme Court's ruling in *Law v. Siegel*, 571 U.S. 415 (2014), and Movant has not identified any other basis to support disallowance of the Debtor's exemption. Therefore, Movant has failed to carry its burden of proof and Movant's objection to the Debtor's retirement exemption is denied.

B. Movant's Request for an Order Authorizing its Freeze of the Retirement Account is Denied

Although styled as an objection to the Debtor's retirement exemption, it appears that Movant's true motivation in filing the motion was to obtain authorization to continue to impose an administrative freeze on the Retirement Account and prohibiting the Debtor from exercising any control over the funds in that account. However, Movant fails to clearly articulate a legal basis for the relief it seeks. Movant cites two decisions involving requests for imposition of preliminary injunctions [Note 2], but Movant neither states that it is seeking a preliminary injunction, nor has it carried its burden of establishing that it would be entitled to one. [Note 3]

Additionally, this is not relief the Court is willing to entertain because the Trustee has already issued her Report of No Distribution and Movant has not shown how its requested relief affects the administration of this bankruptcy case or will provide any benefit to creditors. Rather, it appears Movant's relief would be more appropriately sought before the state court.

Therefore, Movant's request is denied.

III. Conclusion

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

11:00 AM

CONT... Neilla M Cenci

Chapter 7

For the reasons set forth above, the Objection to Retirement Exemption is DENIED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor also stated that the "Funds have been wrongfully 'frozen' by former employer." Doc. No. 1, Sch. B.

Note 2: *In re Soundview Elite, Ltd.*, 543 B.R. 78, 115-116 (S.D.N.Y. 2016) and *In re SK Foods, L.P.*, 2011 WL 10723414 at *35 (Bankr. E.D. Cal. Oct. 11, 2011).

Note 3: To the extent that Movant seeks some other type of prejudgment remedy pursuant to Civil Rule 64 and Bankruptcy Rule 7064, such relief is denied based upon Movant's failure to properly brief the issue or present evidence sufficient to carry its burden of proof.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 8, 2019

Hearing Room 1568

11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#101.00 Hearing re [27] *Creditor Ball C M, Inc's Notice Of Objection To Claim Of Homestead Exemption And Objection To Homestead Exemption Claim*

Docket 0

Tentative Ruling:

5/6/2019

For the reasons set forth below, CONTINUE HEARING to September 18, 2019 at 11:00 a.m.

Creditor Ball C M, Inc. ("Movant") seeks an order disallowing the Debtor's \$175,000 homestead exemption pursuant to § 522(o) [Doc. No. 27] (the "Objection to Homestead Exemption"). Section 522(o) "provides that the value of property claimed as a homestead must be reduced to the extent that the value is attributable to any fraudulent transfers of nonexempt property made by the debtor within 10 years prepetition." *In re McNabb*, 326 B.R. 785, 787-88 (Bankr. D. Ariz. 2005) (citing 11 U.S.C. § 522(o)). "In light of Congress' adoption in section 522(o) of the identical 'intent to hinder, delay or defraud' language found in section 548(a)(1)(A) and section 727(a)(2), courts may look to case law under these sections for guidance in construing the requisite intent under section 522(o)." 4 Collier on Bankruptcy, ¶ 522.08 (16th ed. 2019). Accordingly, a debtor's exemptible interest in homestead property should not be reduced absent a showing of specific intent to hinder, delay or defraud, but a party may rely upon certain "badges of fraud" to prove the existence of actual fraud. *Id.*

On March 7, 2019, Movant initiated an adversary proceeding against the Debtor by filing a complaint (the "Complaint") asserting claims under §§ 523(a)(2)(A), (a)(4), (a)(6) and 727(a)(2), (a)(3), (a)(4), and (a)(5) [2:19-ap-01605] (the "Non-Dischargeability Action"). The allegations set forth in the Complaint are substantially similar to the assertions underlying Movant's Objection to Homestead Exemption. Accordingly, it appears that any ruling with respect to the instant motion may have preclusive effect and potentially interfere with the Non-Dischargeability Action. Therefore, the Court finds it appropriate to defer ruling on the Objection to

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, May 8, 2019

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11:00 AM

CONT... Neilla M Cenci

Chapter 7

Homestead Exemption until the Non-Dischargeability Action has concluded.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 13, 2019

Hearing Room 1568

10:00 AM

2:19-13182 Paul Chavez Monje and Amparo Torres Monje

Chapter 7

#1.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Chrysler 300, VIN 2C3CCAAG8FH931439 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

5/9/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The Debtors filed a response stating that they do not oppose the granting of the Motion (Doc. No. 14).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtors' Statement of Intention in which the Debtors stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the

**United States Bankruptcy Court
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CONT... Paul Chavez Monje and Amparo Torres Monje Chapter 7

Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul Chavez Monje

Represented By
Kelly Warren

Joint Debtor(s):

Amparo Torres Monje

Represented By
Kelly Warren

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Monday, May 13, 2019

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10:00 AM

2:19-13566 Tina Agnes Tautolo

Chapter 7

#2.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Jeep Compass VIN 1C4NJCBA9ED570668 . (Wang, Jennifer)

Docket 7

Tentative Ruling:

5/9/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Tina Agnes Tautolo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Tina Agnes Tautolo

Represented By
Heather J Canning

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 13, 2019

Hearing Room 1568

10:00 AM

2:19-14068 Anibal Chavez

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Chevrolet Malibu VIN 1G1ZE5STXHF196057 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

5/9/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Anibal Chavez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Anibal Chavez

Represented By
Hector Vega

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, May 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 HearingRE: [2240] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Wanda Hadley, et al. v St. Vincent Medical Center, et al. , BC684900 .

Docket 2240

Tentative Ruling:

5/9/2019

Appearances required. Movants must clarify whether they are willing to limit their recovery in the State Court Action to insurance. If Movants are prepared to so limit their recovery, the Court is prepared to grant stay relief, effective immediately, so that trial of the State Court Action may proceed as scheduled on May 28, 2019. However, if Movants intend to seek a deficiency claim against St. Vincent's estate, granting stay relief at this time would be premature, as it would require the Debtors to devote resources to defending against the State Court Action. In the event that Movants wish to assert a deficiency claim beyond available insurance, the Court is prepared to delay the effectiveness of stay relief until July 19, 2019.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2240] (the "Motion")
- 2) Debtors' Response and Opposition to Motion for Relief from the Automatic Stay Filed on Behalf of Wanda Hadley [Doc. No. 2281] (the "Opposition")
- 3) Official Committee of Unsecured Creditors' Joinder to Debtors' Response and Opposition to Motion for Relief from the Automatic Stay Filed on Behalf of Wanda Hadley [Doc. No. 2282]
- 4) No Reply is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11

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CONT... Verity Health System of California, Inc.

Chapter 11

cases. Doc. No. 17.

Wanda Hadley, Alexandria Hadley, and Gabriella Hadley (collectively, the “Movants”) seek relief from the automatic stay, pursuant to § 362(d)(1), to permit Movants to prosecute a medical malpractice and wrongful death action (the “State Court Action”) against Debtor St. Vincent Medical Center (“St. Vincent”). Non-debtor Anthony Ho, M.D., is also named as a defendant in the State Court Action. Movants commenced the State Court Action on November 28, 2017. Trial in the State Court Action is scheduled to begin on May 28, 2019.

Movants contend that the following grounds exist for stay relief:

- 1) Movants seek recovery only from applicable insurance and waive any deficiency or other claim against St. Vincent or property of St. Vincent’s estate.
- 2) Movants seek recovery primarily from third parties and agree that the stay will remain in effect as to enforcement of any resulting judgment against St. Vincent or St. Vincent’s estate, except that Movants will retain the right to file a proof of claim under § 501 and/or an adversary complaint under §§ 523 or 727.

In Opposition to the Motion, Debtors state that they would consider stipulating to stay relief provided Movants agreed to seek recovery only from insurance and waived any deficiency claim. Debtors note that Movants contradict themselves by first stating that they seek recovery only from applicable insurance, but then stating that they reserve the right to file a proof of claim against St. Vincent’s estate. Debtors further assert that being required to litigate the State Court Action would distract from pressing issues, such as closing the sale of the remaining hospitals. Debtors request that if the Court is inclined to grant stay relief, such relief not take effect until July 19, 2019. The Official Committee of Unsecured Creditors joins the Debtors’ Opposition to the Motion.

No Reply in support of the Motion is on file.

II. Findings and Conclusions

The relief sought by Movants is not consistent. Movants first state that they seek recovery only from applicable insurance and waive any deficiency claim against St. Vincent. Movants then retain the right to file a proof of claim against St. Vincent. If Movants were limiting their recovery to St. Vincent’s insurance, it would not be

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CONT... Verity Health System of California, Inc.

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necessary for them to file a proof of claim.

Movants shall appear to clarify whether they are willing to limit their recovery in the State Court Action to insurance. If Movants are prepared to so limit their recovery, the Court is prepared to grant stay relief, effective immediately, so that trial of the State Court Action may proceed as scheduled on May 28, 2019. However, if Movants intend to seek a deficiency claim against St. Vincent's estate, granting stay relief at this time would be premature, as it would require the Debtors to devote resources to defending against the State Court Action. Such a commitment of resources would interfere with the administration of the estate by distracting the Debtors from the critical task of closing the sale of the Debtors' remaining four hospitals. Although the Court has entered an order approving the sale, the Debtors will be required to devote substantial attention to issues arising in connection with the California Attorney General's review of the sale, the assumption and assignment of executory contracts and unexpired leases, and the treatment of collective bargaining agreements between the Debtors and various unions.

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921.

Of the twelve *Curtis* factors, the "most important ... is the effect of [the nonbankruptcy litigation] on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Curtis*, 40 B.R. at 806. As explained above, if Movants are not willing to limit their recovery to insurance, granting stay relief would interfere with the administration of the estate by distracting the Debtors from important matters pertaining to the closing of the sale of the remaining hospitals. In the event that Movants wish to assert a deficiency claim beyond available insurance, the Court is prepared to delay the effectiveness of stay relief until July 19, 2019.

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CONT... Verity Health System of California, Inc.

Chapter 11

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-24837 Nandini, Inc.

Chapter 11

#5.00 HearingRE: [31] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1355 Beverly Estates Drive, Beverly Hills, California 90210 .

Docket 31

Tentative Ruling:

5/9/2019

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 31] (the "R/S Motion")
2. Debtor's Response to Motion Regarding the Automatic Stay and Declarations in Support [Doc. No. 33] (the "Opposition")
3. Declaration of Appraiser Michael Ford in Support of Response to Motion Regarding Automatic Stay [Doc. No. 34] (the "Ford Decl.")
4. As of the date of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Nandini, Inc. (the "Debtor"), filed this voluntary chapter 11 case on December 24, 2018 (the "Petition Date"). On January 7, 2019, the Debtor filed its schedules [Doc. No. 7]. On Schedule A, the Debtor listed a 50% interest in real property located at 1355 Beverly Estate Drive, Beverly Hills, CA 90210 (the "Property") worth \$7,000,000, based on an estimated \$14,000,000 fair market value. On Schedule D, the Debtor listed the secured claim of Jain 2012 Gift Trust dba Mirada Group ("Jain"), the holder of a first-priority deed of trust on the Property, in the amount of \$8,500,000. The Debtor's Schedules do not identify any other secured creditor or any priority or general unsecured creditors. *See* Doc. No. 7.

Jain presently seeks an order granting it relief from the automatic stay pursuant to §§ 362(d)(1), (2), and (4) to proceed with its foreclosure efforts in accordance with

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applicable state law. First, Jain argues that cause exists to lift the stay under § 362(d) (1) because: (a) as of the date of the R/S Motion the Debtor has failed to make nineteen (19) monthly payments in the amount of \$117,875 each; and (b) Jain's interest is not protected by an adequate equity cushion because Jain's current claim against the Property is \$9,194,722.94 which exceeds the Property's estimated fair market value of \$8,300,000 [Note 1]. Jain also asserts that the Property is encumbered by an undisclosed judgment lien securing a \$57,425.21 judgment. For the same reasons, Jain argues that cause exists to lift the stay under § 362(d)(2) because there is no equity in the Property and, as a result, the Property is not necessary for an effective reorganization.

Next, Jain argues that cause exists to lift the stay under § 362(d)(4) because the Debtor filed this case in bad faith. Specifically, Jain states that on May 29, 2018, the Debtor's sole shareholder Nandini M. Savin ("Ms. Savin"), filed a voluntary individual chapter 13 bankruptcy case [Case No. 2:18-bk-16153-NB] (the "Individual Case"), which was subsequently dismissed on December 21, 2018, with a 180-day refiling bar. Jain states it obtained relief from stay in the Individual Case, but shortly thereafter that case was dismissed, and the Debtor filed this case.

Jain also argues that cause exists to grant stay relief under § 362(d)(4) because the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved (a) the Debtor's transfer of a 50% interest in the Property to Ms. Savin without Jain's consent or court approval, and (b) multiple bankruptcy cases affecting the Property, which includes the Individual Case and the instant case.

On April 29, 2019, the Debtor filed a timely Opposition to the R/S Motion [Doc. No. 33]. The Debtor denies that this bankruptcy case was filed in bad faith and argues that Jain is adequately protected by a 34% equity cushion because the fair market value of the Property is \$14,000,000 based upon an appraisal the Debtor obtained on December 1, 2018, shortly before filing this case. In support of its Opposition, the Debtor attached the Declaration of Ms. Savin (the "Savin Decl."). Ms. Savin testifies, in relevant part, that she transferred a 50% interest in the Property from the Debtor to herself in August 2017 on the advice of her accountant and that the transfer was done at a time when the loan was not in default. Savin Decl., ¶¶ 6-7.

As of the date of this tentative ruling, no reply is on file.

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CONT... Nandini, Inc.

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II. Findings of Fact and Conclusions of Law

Section 362(d)(4) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay with respect to an act against the property if the court finds that the filing of the petition was part of a scheme to delay, hinder or defraud creditors that involved either (1) the transfer of all or part ownership of or interest in the property without the consent of the secured creditor or court approval or (2) multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4).

"[T]he Code requires more than just the occurrence of [] multiple filings. It requires that 'the filing of the petition was part of a scheme to delay, hinder or defraud creditors.'" *In re Khurana*, 2015 Bankr. LEXIS 2399, at *23-24 (Bankr. D. Idaho July 21, 2015). Factors considered in determining whether the filing of the petition was part of a scheme to delay, hinder or defraud include:

The number of bankruptcy filings; their frequency; the time lapsed between filings; whether the filings were dismissed, and for what reasons; whether the evidence suggests that the debtor had a legitimate belief that it could reorganize in such cases; the strategic timing of the cases, especially in relation to creditor collection efforts such as foreclosure; any changes in circumstances between the various case; and others.

Id. at *25-26.

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). First, Ms. Savin concedes that she transferred 50% of the Debtor's interest in the Property to herself in August 2017. Savin Decl., ¶ 6. The fact that Ms. Savin acted on the advice of her accountant does not change the fact that the transfer was without Jain's consent.

Second, this is the second bankruptcy filing affecting the Property within one year and Ms. Savin's Individual Case was dismissed with a 180-day refiling bar just three days before the commencement of this case. *See* 2:18-bk-16153-NB, Doc. No. 107.

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The Court also notes that on December 6, 2018, eighteen days before the commencement of this case, the bankruptcy court entered an order granting Jain's motion for relief from stay under § 362(d)(1) in the Individual Case. *Id.*, Doc No. 103. Based on this Court's review of the docket and pleadings in the Individual Case, it appears that in the approximately seven-month duration of that case, Ms. Savin tried to refinance or sell the Property without success.

Additionally, the Court does not find that the Debtor had a legitimate belief that it could reorganize its affairs in this case because the Debtor's Schedules reveal that the Debtor does not have any creditors, other than Jain, and the Debtor's Monthly Operating Reports reveal that the Debtor does not have any meaningful business to reorganize. *See* Doc. Nos. 1, 7, 20, 21, 25 & 30. Furthermore, despite having had the benefit of an additional five months of stay protection, the Debtor has not filed a disclosure statement and plan of reorganization, sought to employ a real estate broker, or otherwise demonstrated that it is taking meaningful steps to sell or refinance the Property. Nor has the Debtor demonstrated that in there has been any meaningful change in circumstances that will facilitate a successful reorganization in this case. **[Note 2]** Therefore, it appears that the Debtor is simply enjoying the benefit of twelve months of stay protection, and nineteen months of rent-free living, without any realistic hope of retaining the Property.

For the foregoing reasons, the Court finds that the filing of the petition was part of a scheme to delay and hinder Jain's efforts to exercise its state law foreclosure rights in connection with the Property. For the same reasons, the R/S Motion is granted pursuant to section 362(d)(1) based on Debtor's bad faith filing.

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED pursuant to §§ 362(d)(1) and (d)(4). The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case

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CONT... Nandini, Inc.

Chapter 11

under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Jain is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Jain also notes that in the Individual Case (defined above), Ms. Savin's schedule A valued the Property at \$7,800,000 under penalty of perjury. Declaration of Martin Phillips, ¶ 3. Jain states that in connection with certain pleadings filed in the Individual Case, Ms. Savin later filed a broker's price opinion estimating the value of the Property in the range of \$8,500,000 - \$9,000,000. *Id.*, ¶ 5.

Note 2: The Court acknowledges the Debtor's contention that Jain is protected by a 34% equity cushion based on the \$14,000,000 fair market value estimate provided by the Debtor's appraiser. While the extent and adequacy of any equity cushion will not alter the final outcome in view of the Court's findings the cause exists to grant relief under §§ 362(d)(1) and (d)(4), the Court notes that it does not assign much weight, if any, to the Ford appraisal because Mr. Ford, and/or the Debtor, have failed to adequately explain the nearly 200% increase in value from the initial \$7,800,000 valuation provided six months earlier in Ms. Savin's Schedules filed on June 26, 2018. *See* 2:18-bk-16153-NB, Doc. No. 15, Schedules A & D.

Party Information

Debtor(s):

Nandini, Inc.

Represented By

**United States Bankruptcy Court
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CONT... Nandini, Inc.

Thomas B Ure

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#1.00 Status Hearing

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

fr. 1-15-19; 4-16-19; 4-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 6-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

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CONT... Lempa Roofing Inc

Chapter 7

The Home Depot, Inc. Pro Se

Home Depot Credit Services Pro Se

Home Depot U.S.A., Inc. Pro Se

Plaintiff(s):

Rosendo Gonzalez Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR) Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01388 Elissa D. Miller, solely in her capacity as chapte v. LC Engineering Group,

#2.00 Status Hearing to Monitor Consummation of Settlement RE: [1] Adversary case 2:18-ap-01388. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against LC Engineering Group, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

LC Engineering Group, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 14, 2019

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01389 Elissa D. Miller, solely in her capacity as chapte v. Creative Sound & Vision,

#3.00 Status Hearing to Monitor Consummation of Settlement
RE: [1] Adversary case 2:18-ap-01389. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Creative Sound & Vision, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Creative Sound & Vision, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01415 Elissa D. Miller, solely in her capacity as chapte v. Certified Tile, Inc., a

#4.00 Status Hearing

RE: monitor consummation of the settlement [1] Adversary case 2:18-ap-01415. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Certified Tile, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Certified Tile, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
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CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01418 Elissa D. Miller, solely in her capacity as chapte v. JH Plumbing

#5.00 Status Hearing to Monitor Consummation of Settlement
RE: [1] Adversary case 2:18-ap-01418. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JH Plumbing Corporation, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

***** VACATED *** REASON: CONTINUED 9-10-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JH Plumbing Corporation, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
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Asa S Hami
Jessica Vogel

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2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:19-01061 Rosendo Gonzalez, Chapter 7 Trustee v. TCG Assets, Inc., a Colorado

#6.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01061. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against TCG Assets, Inc., a Colorado corporation, TCG International Holdings, Inc., a Florida corporation, Michael B. Citron, an individual, Kenneth R. Morris, an individual, Law Office of Kenneth R. Morris LLC, a Colorado limited liability company, The Ulzheimer Group LLC, a Georgia limited liability, John Ulzheimer, an individual, Nicholas Moffat, an individual. (Charge To Estate). Complaint for 1. Avoidance of Transfers Pursuant to 11 U.S.C. § 544; 2. Avoidance of Avoidable Transfers Pursuant to 11 U.S.C. § 548; 3. Recovery on Account of Avoided Transfers Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Funds of Estate Pursuant to 11 U.S.C. § 542; and 5. Breach of Fiduciary Duty Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Melissinos, C)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

TCG Assets, Inc., a Colorado

Pro Se

TCG International Holdings, Inc., a

Pro Se

Michael B. Citron, an individual

Pro Se

Kenneth R. Morris, an individual

Pro Se

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CONT... Green Jane Inc Chapter 7

Law Office of Kenneth R. Morris Pro Se

The Ulzheimer Group LLC, a Pro Se

John Ulzheimer, an individual Pro Se

Nicholas Moffat, an individual Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
C John M Melissinos

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Singh, Sonia)

fr. 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 6-11-19 AT 10:00 A.M.**

Tentative Ruling:

1/14/2019

The Chapter 7 Trustee (the "Trustee") shall appear to respond to the Court's concerns, set forth below.

The Trustee has collected and is holding receivables in the amount of \$23,117.15 in a segregated account (the "Segregated Funds"). The Segregated Funds are encumbered by security interests asserted by Defendants FinishLine Capital, Inc., ML Factors Funding, LLC, Last Chance Funding, Inc., TVT Capital, LLC, Complete Business Solutions Group, Inc., Karish Kapital LLC, and Yellowstone Capital West, LLC. The Trustee is unable to determine which Defendant is entitled to the Segregated Funds. The Trustee is willing to deliver the Segregated Funds to whichever Defendant is entitled to receive them.

Pursuant to Cal. Code Civ. Proc. § 386, the Trustee seeks the following relief:

- 1) An order directing the Clerk of the Court to hold the Segregated Funds pending determination of the rights of the Defendants;
- 2) An order requiring Defendants to litigate their respective rights and claims in and to the Segregated Funds;
- 3) An order discharging the Trustee from any and all liability on account of

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CONT...

Golden Diamond International Inc.

Chapter 7

- the claims of each of the Defendants in and to the Segregated Funds; and
- 4) An award of costs and reasonable attorneys' fees, to be determined by the Court and paid out of the Segregated Funds.

Each Defendant was required to respond to the Complaint by no later than October 17, 2018. None of the Defendants have responded to the Complaint. In his *Unilateral Status Report*, the Trustee states that he intends to file a motion to deposit the Segregated Funds to the Court's registry.

Cal. Code Civ. Proc. § 386 provides:

Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.

In *Dial 800 v. Fesbinder*, 118 Cal. App. 4th 32, 42–43, 12 Cal. Rptr. 3d 711, 718 (2004), *as modified* (May 5, 2004), the California Court of Appeal explained the purpose and structure of interpleader actions brought under Cal. Code Civ. Proc. § 386:

In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds. Upon an admission of liability and deposit of monies with the court, the plaintiff then may be discharged from liability and dismissed from the interpleader action. The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court's custody until the rights of the potential claimants of the monies can be adjudicated. Thus, the interpleader proceeding is traditionally viewed as two lawsuits in one. The first dispute is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds.

Dial 800, 118 Cal. App. 4th at 42–43 (internal citations omitted).

To satisfy his right to interplead the funds, the Trustee must "show that the

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CONT... Golden Diamond International Inc.

Chapter 7

defendants make conflicting claims" to the funds, and that the Trustee "cannot safely determine which claim is valid ..." *Placer Foreclosure, Inc. v. Aflalo*, 23 Cal. App. 5th 1109, 1113, 233 Cal. Rptr. 3d 694, 697 (Ct. App. 2018).

The Trustee shall appear at the hearing to address the following issues. First, the Court requires a further explanation regarding why the Trustee "cannot safely determine" which of the claims asserted by the Defendants is valid. *Placer Foreclosure*, 23 Cal. App. 5th at 1113. The Complaint alleges that each Defendant has recorded UCC financing statements against the Debtor's assets with the California Secretary of State. It is unclear to the Court why the Trustee cannot determine which Defendant is entitled to the funds by examining the priority of the security interests asserted by the Defendants.

Second, the Court requires further information regarding the Trustee's plans to resolve this action given the failure of any of the Defendants to respond to the Complaint. Seven entities have asserted security interests against the Segregated Funds, which amount to only \$23,117.15. In the event the Court determines that the Trustee is entitled to be paid reasonable attorneys' fees from the Segregated Funds, the amount available to the Defendants will be even less. Given the small amount at issue, it would not be surprising if one or more of the Defendants continued to decline to respond to the litigation. If the Defendants refuse to participate in the litigation, how can the Court determine which Defendant is entitled to the funds?

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
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Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se

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CONT... Golden Diamond International Inc.

Chapter 7

Yellowstone Capital West

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

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10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18; 5-15-18; 8-14-18; 10-16-18; 1-23-19

Docket 1

Tentative Ruling:

5/13/2019

Plaintiff has obtained final judgment in the State Court (the “State Court Judgment”) against Defendant, awarding Plaintiff damages of \$225,000 for sexual battery (Cal. Civ. Code § 1798.5), gender violence (Cal. Civ. Code § 52.4), and violation of the Ralph Civil Rights Act (Cal. Civ. Code § 57.7). The portion of the State Court Judgment awarding Plaintiff attorneys’ fees in the amount of approximately \$2.5 million remains subject to an appeal and is not yet final. However, the State Court Judgment’s award of costs in the amount of \$84,090.34 is final.

On February 4, 2019, the Court found that the portion of the State Court Judgment awarding damages and costs was non-dischargeable pursuant to § 523(a)(6). Doc. Nos. 42 and 45–46. The Court stated that adjudication of the dischargeability of the fee portion of the State Court Judgment would occur once that aspect of the judgment became final.

On March 19, 2019, Defendant filed a Chapter 13 petition, Case No. 2:19-bk-12964-NB. (The Chapter 7 case in which this litigation arose was closed on August 22, 2017.) Defendant’s motion to convert his Chapter 13 case to Chapter 11 is set to be heard by Judge Bason on May 16, 2019.

The Court notes that as a result of Defendant’s recent Chapter 13 petition, the appeal of the attorneys’ fees portion of the State Court Judgment has been stayed. A continued Status Conference will be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report, which shall discuss the status of Defendant’s appeal of the State Court’s award of attorneys’ fees, shall be submitted by no later than fourteen days prior to the hearing.

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CONT... **John Martin Kennedy** **Chapter 7**

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:18-11795 Alana Gershfeld

Chapter 7

Adv#: 2:19-01052 Dye v. Khasin et al

#9.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01052. Complaint by Carolyn A Dye against Maria Khasin, Larry A. Khasin, M & L Living Trust. (Charge To Estate).
Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. §§ 544 And 548; (2) To Recover Avoided Transfers Pursuant To 11 U.S.C. § 550; And,(3) Automatic Preservation Of Avoided Transfer Pursuant To 11 U.S.C. § 551
Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Gonzalez, Rosendo)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alana Gershfeld

Represented By
Alla Tenina

Defendant(s):

Maria Khasin

Pro Se

Larry A. Khasin

Pro Se

M & L Living Trust

Pro Se

Plaintiff(s):

Carolyn A Dye

Represented By
Rosendo Gonzalez

Trustee(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

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2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01276 LeClair v. United States Of America (Treasury Department, Int

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01276. Complaint by Jeremy Wyatt LeClair against United States Of America (Treasury Department, Internal Revenue Service Division) . (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)). Adversary transferred-in from Western District of North Carolina (Charlotte) and Adversary Proceeding #: 18-03043 to Central District of California (Los Angeles). (Ly, Lynn) Additional attachment(s) added on 8/30/2018 (Ly, Lynn). Additional attachment(s) added on 8/30/2018 (Ly, Lynn).

fr: 12-11-18

Docket 1

Tentative Ruling:

5/13/2019

On December 21, 2018, the Court entered an order extending the deadline for the United States Trustee (the "UST") to file either a complaint objecting to the Debtor/Defendant's discharge or a motion to dismiss Debtor/Defendant's bankruptcy case pursuant to § 707(b). Bankr. Doc. No. 31. On December 27, 2018, the Court entered an order staying this adversary proceeding. Adv. Doc. No. 16. The Court found that this dischargeability action would be rendered moot if the UST filed a complaint objecting to discharge and prevailed.

The UST has not filed a complaint objecting to Debtor/Defendant's discharge or a motion to dismiss Debtor/Defendant's bankruptcy case. However, creditor Alvaro Cortes ("Cortes") has filed a complaint (1) objecting to the dischargeability of specific indebtedness under § 523(a)(2)(A) and (a)(6) and (2) objecting to the Debtor/Defendant's discharge under § 727(a)(2).

If Cortes prevails on his claims under § 727(a)(2), this action will be rendered moot. Therefore, the Court will maintain the stay that was previously ordered until Cortes' § 727(a)(2) claims have been adjudicated. A continued Status Conference will be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report shall be

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CONT... Jeremy Wyatt LeClair

Chapter 7

submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

United States Of America (Treasury

Pro Se

Plaintiff(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

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10:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#11.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

Docket 1

***** VACATED *** REASON: CONTINUED 6-19-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By

Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-21480 Rosa Huong Duong

Chapter 7

Adv#: 2:19-01048 Miller, Chapter 7 Trustee v. Mai et al

#12.00 Status Hearing RE: [1] Adversary case 2:19-ap-01048. Complaint by Elissa D Miller, Chapter 7 Trustee against Mik H Mai, DLMRT Corporation Inc., a California corporation, Rosa Huong Duong, Pier Duong. (Charge To Estate). Complaint For (1) Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548, and 550, (2) Alter Ego, and (3) Conspiracy to Commit Fraudulent Transfer Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Werth, Steven)

Docket 1

Tentative Ruling:

5/13/2019

Having reviewed the Unilateral Status Report filed by the Plaintiff, the Court

HEREBY FINDS AND ORDERS AS FOLLOWS:

- 1) Pursuant to the parties' request, a continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 2) Based upon Plaintiff's view that formal mediation will not be productive while Plaintiff's discovery requests remain outstanding, the Court will not order the matter to formal mediation at this time. The Court will consider whether formal mediation is appropriate at the August 13, 2019 Status Conference.
- 3) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert

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- discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points

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CONT...

Rosa Huong Duong

Chapter 7

and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rosa Huong Duong

Represented By
Barry E Borowitz

Defendant(s):

Mik H Mai

Pro Se

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CONT... Rosa Huong Duong

Chapter 7

DLMRT Corporation Inc., a

Pro Se

Rosa Huong Duong

Pro Se

Pier Duong

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Steven Werth

Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-22393 Sharon R Williams

Chapter 7

Adv#: 2:19-01050 Miller v. Hancox

#13.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01050. Complaint by Elissa D. Miller against Donnell Hancox. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Simons, Larry)

Docket 1

***** VACATED *** REASON: CONTINUED 6-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon R Williams	Pro Se
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Defendant(s):

Donnell Hancox	Pro Se
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Plaintiff(s):

Elissa D. Miller	Represented By Larry D Simons
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Trustee(s):

Elissa Miller (TR)	Represented By Larry D Simons
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-22630 Fabricio Mejia

Chapter 7

Adv#: 2:19-01024 Amy's Pastry. Inc. v. Mejia et al

#14.00 Status Hearing RE: [1] Adversary case 2:19-ap-01024. Complaint by Amy's Pastry. Inc. against Fabricio Mejia, Ana Gloria Mejia. 2, & 3) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Bensamochan, Eric)

Docket 1

Tentative Ruling:

5/13/2019

Appearances required.

The caption of the Complaint names Fabricio Mejia and Ana Mejia (who filed a joint voluntary Chapter 7 petition) as defendants. However, all of the Complaint's allegations are directed toward only Fabricio Mejia. It appears that the inclusion of Ana Mejia as a defendant may have been in error. Plaintiff must appear to clarify this issue. Since Ana Mejia has not filed an Answer, she may be voluntarily dismissed as a defendant, pursuant to Civil Rule 41(a)(1)(A)(i), if she was sued in error.

The Summons and Complaint were not properly served upon Defendants Fabricio Mejia and Ana Gloria Mejia. The Proof of Service [Adv. Doc. No. 6] states that the Summons and Complaint were served upon Jennifer Ann Aragon at 717 W. Temple St. #201, Los Angeles, CA 90012. Ms. Aragon filed a joint voluntary Chapter 7 petition on the Defendants' behalf. However, the *Disclosure of Compensation of Attorney for Debtors* [Bankr. Doc. No. 1] provides that Ms. Aragon's services do not include "representation of the debtors in any dischargeability actions ..." Therefore, service of the Summons and Complaint upon Ms. Aragon was not sufficient because Ms. Aragon was not acting as the Defendants' attorney with respect to the dischargeability litigation.

Defendant Fabricio Mejia waived any defects as to service by filing an Answer to the Complaint on February 13, 2019. *See* Civil Rule 12(b)(6) (providing that the defense of insufficient service of process "must be made before pleading if a responsive pleading is allowed"). Because Ana Mejia has not filed an Answer, it will be necessary for Plaintiff to obtain an alias summons in the event that Plaintiff intends

**United States Bankruptcy Court
Central District of California
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Tuesday, May 14, 2019

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10:00 AM

CONT... Fabricio Mejia

Chapter 7

to continue to prosecute the action against her.

In the event that Plaintiff elects to voluntarily dismiss Ana Mejia, the Court is prepared to order the following with respect to the litigation against Fabricio Mejia:

- 1) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/15/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/15/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT...

Fabricio Mejia

Chapter 7

and the preparation of the Pretrial Stipulation:

- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
 - 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT... **Fabricio Mejia** **Chapter 7**
the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

Party Information

Debtor(s):

Fabricio Mejia

Represented By
Jennifer Ann Aragon

Defendant(s):

Fabricio Mejia

Pro Se

Ana Gloria Mejia

Pro Se

Joint Debtor(s):

Ana Gloria Mejia

Represented By
Jennifer Ann Aragon

Plaintiff(s):

Amy's Pastry. Inc.

Represented By
Eric Bensamochan

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-23944 Yean Hee Kim

Chapter 7

Adv#: 2:19-01058 Jeong v. Kim et al

#15.00 Status Hearing RE: [1] Adversary case 2:19-ap-01058. Complaint by Younkyung Jeong against Yean Hee Kim. false pretenses, false representation, actual fraud)),(65 (Dischargeability - other)),(65 (Dischargeability - other)),(65 (Dischargeability - other)) (Iwuchuku, Donald)

Docket 1

Tentative Ruling:

5/13/2019

Defendant filed an Answer to the Complaint on the same day that Plaintiff filed a Request for Entry of Default. The Answer was filed 21 days late. Although the Answer was not timely filed, the Court will direct the Clerk of the Court (the "Clerk") not to enter default as requested by Plaintiff. As explained below, entry of default would be a useless act that would needlessly increase costs and cause unnecessary delay because Defendant could successfully move to set aside default if it were entered.

Civil Rule 55(c) provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

Here, none of the factors apply, so it is appropriate for the Court to direct the Clerk to take no action on the Request for Entry of Default in order to avoid unnecessary costs and delay. First, no prejudice inures to Plaintiff. Merely being required to litigate the merits of a claim does not qualify as prejudice. *TCI Grp. Life*

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10:00 AM

CONT... Yean Hee Kim

Chapter 7

Ins. Plan v. Knoebber, 244 F.3d 691, 701 (9th Cir. 2001). Second, Defendant may have a meritorious defense. Defendant's burden with respect to this factor is "not extraordinarily heavy"; Defendant is required only to allege sufficient facts to constitute a defense. *TCI Grp.*, 244 F.3d at 700. By filing an Answer that denies the Complaint's operative allegations, Defendant has satisfied this factor. Third, there is no indication that Defendant's brief delay in answering the Complaint was culpable. "[A] defendant's conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). Filing an Answer 21 days late is not devious or in bad faith.

Based upon the foregoing, and having reviewed the Unilateral Status Reports filed by Plaintiff and Defendant, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The Clerk is directed to take no action on Plaintiff's Request for Entry of Default.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT...

Yean Hee Kim

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT...

Yean Hee Kim

Chapter 7

shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Yean Hee Kim

Represented By
M Teri Lim

Defendant(s):

Yean Hee Kim

Pro Se

Yean Hee Kim

Pro Se

Plaintiff(s):

Younkyung Jeong

Represented By
Donald E Iwuchuku

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT... Yean Hee Kim

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#16.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01066. Complaint by Hankey Capital LLC against Robert Leslie Baillie Quigg. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Mitnick, Eric)

Docket 1

***** VACATED *** REASON: CONTINUED 5-22-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Pro Se

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

Adv#: 2:19-01065 BALL C M, Inc. v. Cenci et al

#17.00 Status HearingRE: [1] Adversary case 2:19-ap-01065. Complaint by BALL C M, Inc. against Neilla M Cenci. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Slates, Ronald)

Docket 1

Tentative Ruling:

5/13/2019

Defendant has failed to timely respond to the Complaint. Good cause appearing, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) By no later than **June 28, 2019**, Plaintiff shall obtain entry of Defendant's default and shall file a Motion for Default Judgment. The Court notes that Plaintiff has requested that the Court conduct a 3–5 hour default judgment prove-up hearing. The Court does not generally conduct default judgment prove-up hearings. Plaintiff shall submit all the evidence necessary to establish the damages alleged in the Complaint in the Motion for Default Judgment. If upon review of the Motion for Default Judgment the Court determines that an evidentiary hearing is required, the parties will be so notified.
- 2) All litigation dates and deadlines previously set by the Court are VACATED.
- 3) A continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** Plaintiff shall file a Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Neilla M Cenci

Chapter 7

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Neilla M Cenci

Pro Se

Plaintiff(s):

BALL C M, Inc.

Represented By
Ronald P Slates

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 2-12-19

Docket 1

***** VACATED *** REASON: DISMISSED 4-30-19**

Tentative Ruling:

2/11/2019

This action has settled. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) By no later than **March 15, 2019**, the Committee shall file a motion seeking approval of the settlement (the "Rule 9019 Motion").
- 2) A Continued Status Conference is set for **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 3) The litigation deadlines previously set by the Court are VACATED.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 3-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-13-19 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#21.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01042. Complaint by VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Notice of Required Compliance with Local Bankruptcy Rule 7026-1) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 3-11-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER

Pro Se

Plaintiff(s):

VERITY HEALTH SYSTEM OF

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Steven J Kahn

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 14, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#22.00 Status HearingRE: [13] Amended Complaint /First Amended Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay and Injunctive Relief by Steven J Kahn on behalf of ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (RE: related document(s)1 Adversary case 2:19-ap-01042. Complaint by VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Notice of Required Compliance with Local Bankruptcy Rule 7026-1) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(71 (Injunctive relief - reinstatement of stay)) filed by Plaintiff ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, Plaintiff VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, Plaintiff ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation). (Kahn, Steven)

Docket 13

Tentative Ruling:

5/13/2019

On March 13, 2019, the Court issued a Scheduling Order [Doc. No. 16], which the Plaintiff served upon the Defendant on March 14, 2019. Doc. No. 19. The Scheduling Order provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than ten days prior to the date set for the first status conference. *See Wellness Int'l Network,*

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Tuesday, May 14, 2019

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Ltd. v. Sharif, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

Scheduling Order at ¶ 6.

In the Joint Status Report [Doc. No. 23] filed on April, 2019, Defendant checked the box indicating that it does not consent to entry of a final judgment by the Bankruptcy Court. However, Defendant did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. Therefore, Defendant is deemed to consent to the Bankruptcy Court's authority to enter a final judgment.

Having reviewed the Joint Status Report filed by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered are modified pursuant to the parties' request. The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/15/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/15/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery

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cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and

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shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER

Pro Se

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Plaintiff(s):

VERITY HEALTH SYSTEM OF

Represented By
Steven J Kahn

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

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#23.00

Hearing

RE: [2304] Emergency motion re: Debtors' and Premier Inc.'s (And Subsidiaries)
Joint Motion and Joint Motion for Entry of an Order Sealing Confidential Agreements
Re Rule 9019 and Section 365 Motion

Docket 2304

Tentative Ruling:

5/13/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Debtors' and Premier Inc.'s (and Subsidiaries) Joint Motion and Joint Motion for Entry of an Order Sealing Confidential Agreements Re Rule 9019 and Section 365 Motion [Doc. No. 2313] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 2304]
 - b) Order Setting Hearing on Motion to Seal for May 14, 2019, at 10:00 a.m. [Doc. No. 2309]
 - c) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2303, 2304, and 2309 [Doc. No. 2342]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' and Premier Inc.'s (and Subsidiaries') Joint Motion for Entry of an Order Sealing Confidential Documents Re: Rule 9019 and Section 365 [Doc. No. 2347]
- 3) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

A hearing on the Debtors' motion for approval of a settlement agreement with

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Premier, Inc. and certain of its subsidiaries (collectively, "Premier") is set for May 21, 2019 (the "Rule 9019 Motion"). In support of the Rule 9019 Motion, Debtors seek authorization to file under seal certain agreements that the Debtors and Premier entered into prior to the Petition Date (the "Confidential Agreements"). The Confidential Agreements may be described as follows:

- 1) Pursuant to the *Performance Suite Solutions Subscription Agreement*, dated November 14, 2011 (the "Subscription Agreement"), Premier provides technology licensing solutions and other products and services to the Debtors. The Subscription Agreement contains information regarding Premier's packaging of various technical solutions and the fee structures offered by Premier to its customers.
- 2) Pursuant to several *Fair Market Valuation Engagement Agreements* (the "FMV Engagement Agreements"), Premier provides the Debtors with consulting services. The FMV Engagement Agreements describe Premier's methodologies and the fees charged by Premier for its services.
- 3) Pursuant to several *Business Associates Agreements* (the "BAA Agreements"), VHS discloses to Premier patient information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

The Official Committee of Unsecured Creditors (the "Committee") does not oppose the Motion. No other parties have filed an opposition to the Motion.

II. Findings and Conclusions

Section 107(b) provides in relevant part: "On request of a party in interest, the bankruptcy court shall ... protect an entity with respect to a trade secret or confidential research, development, or commercial information." Bankruptcy Rule 9018 implements § 107, and provides in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires ... to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

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CONT... Verity Health System of California, Inc.

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Commercial information is "information which would cause 'an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.'" *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (internal citations omitted); *Ad Hoc Protective Comm. for 10 1/2% Debenture Holders v. Itel Corp. (In re Itel Corp.)*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982) (explaining that "commercial information" is information that, if disclosed, would afford "an unfair advantage to competitors by providing them information as to the commercial operations of the debtor").

Confidential commercial information qualifies for protection under § 107(b) even if it does not rise to the level of a trade secret. *Orion Pictures Corp.*, 21 F.3d at 27. A party seeking a protective order under § 107 need not satisfy Civil Rule 26, which provides that a protective order may issue only "for good cause":

When Congress addressed the secrecy problem in § 107(b) of the Bankruptcy Code it imposed no requirement to show "good cause" as a condition to sealing confidential commercial information. This omission is particularly significant because FRCP 26(c), from which the language of § 107(b) appears to have been drawn, expressly required "good cause" to be established before a discovery protective order could be granted—even when the material sought to be protected was "a trade secret or other confidential research, development, or commercial information."

Orion Pictures Corp., 21 F.3d at 28.

Protection under § 107 is mandatory upon a showing that the information at issue falls within a protected category:

In other areas of the law, courts have relied on showings of "compelling reasons," or balancing the interests of privacy and public right to know, when reviewing a request for judicial non-disclosure. The mandatory language of § 107(b) negates the need for such inquiries. Thus, if the information fits any of the specified categories, the court is *required* to protect a requesting interested party and has no discretion to deny the application. The discretion lies not in whether a court may protect an interested party, but in whether the matters complained of fall within the exception and in what type of protective remedy is necessary under the facts of each case.

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Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.), 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995) (internal citations and quotation marks omitted); see also *Father M, et al. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 430–31 (9th Cir. 2011) (“[Section] 107 eliminates a court’s discretion by making it mandatory for a court to protect documents falling into one of the enumerated exceptions.... Under § 107, the strength of the public’s interest in a particular judicial record is irrelevant; if the exception pertains, the bankruptcy court must issue a protective order on a motion by the affected person or party.”).

The Court finds that the Confidential Agreements contain “confidential ... commercial information” within the meaning of § 107(b). The Confidential Agreements set forth the fees charged by Premier for its consulting and technical services and contain information regarding Premier’s commercial terms, methodologies, and product and service details. The Motion is supported by the uncontroverted testimony of Lauri Bini, Premier’s corporate counsel, that Premier maintains the confidentiality of the information set forth in the Confidential Agreements, and that disclosure of such information would harm Premier’s competitive position. The Court finds that disclosure would put Premier at a competitive disadvantage relative to competitors not required to disclose equivalent information. Because the Confidential Information constitutes “commercial information” as that term is defined in § 107(b), protection is mandatory.

Based upon the foregoing, the Motion is GRANTED in its entirety. By no later than **Thursday, May 16, 2019**, the Debtors shall deliver the Confidential Agreements to Judge Robles’ chambers in a sealed envelope (or envelopes) clearly marked “CONFIDENTIAL.” The Confidential Agreements shall be accompanied by a cover page containing the case caption and the title “Sealed Documents Filed in Support of Motion for Approval of Compromise with Premier Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code § 365 [Doc. No. 2285].” Also by **Thursday, May 16, 2019**, the Debtors shall lodge an order granting the Motion that incorporates this tentative ruling by reference.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge’s Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear

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CONT... Verity Health System of California, Inc.

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at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
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11:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01512. Complaint by Fred Rosenberg against ROBERT MARK CARPENTER. fraud as fiduciary, embezzlement, larceny))
(Ure, Thomas)

fr. 1-23-19

Docket 1

Tentative Ruling:

5/13/2019

On January 24, 2019, the Court denied Plaintiff's *Motion for Summary Judgment* [Doc. No. 31] and denied Plaintiff's request for leave to amend the Complaint. Doc. Nos. 55 and 57. After considering the denial of the Motion for Summary Judgment and the costs of continued litigation, Plaintiff requests that the adversary proceeding be dismissed. Defendant asserts that Plaintiff has committed a material default by failing to comply with its obligations regarding preparation of the Joint Pretrial Stipulation and argues that the action should be dismissed for failure to prosecute.

Since both parties have requested dismissal, the Court will deem the parties to have stipulated to the dismissal of the action pursuant to Civil Rule 41(a)(1)(A)(ii). The Court will prepare and enter an order deeming the action to have been voluntarily dismissed, with prejudice, pursuant to said rule.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... ROBERT MARK CARPENTER

Chapter 7

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Thomas B Ure

FRIENDGIFTR, INC

Represented By
Thomas B Ure

Trustee(s):

Timothy Yoo (TR)

Pro Se

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11:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

Docket 1

***** VACATED *** REASON: CONTINEUD 6-11-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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11:00 AM

2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01234. Complaint by Maground, GmbH against Roberto Kai Hegeler. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Barsness, Christopher)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 6-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Pro Se

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness

Trustee(s):

Heide Kurtz (TR)

Pro Se

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11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18; 11-13-18; 3-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 6-11-19 AT 11:00 A.M.**

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Raviner Kuma Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90

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CONT... **Ravinder Kumar Bhatia**

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days, to allow him to investigate the facts of this action, and potentially substitute in as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

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CONT... Ravinder Kumar Bhatia

Chapter 11

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

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11:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger Chapter 11

Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01244. Complaint by Pac Anchor Transportation, Inc., consisting of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. against People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California. (Charge To Estate). Nature of Suit: (71 (Injunctive relief - reinstatement of stay)) (Haberbush, David)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 10/17/18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

Defendant(s):

People of the State of California ex

Pro Se

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By
David R Haberbush
Vanessa M Haberbush

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11:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

Adv#: 2:18-01225 Sultan Financial Corporation v. Aaron's, Inc.

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01225. Complaint by Sultan Financial Corporation against Aaron's, Inc.. (Charge To Estate). (Attachments: # 1 Summons and Notice of Status Conference # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (91 (Declaratory judgment)), (72 (Injunctive relief - other)) (Brown, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-15-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield

Defendant(s):

Aaron's, Inc.

Pro Se

Plaintiff(s):

Sultan Financial Corporation

Represented By
Richard G Reinis
Jeffrey N Brown
Julian Brew

**United States Bankruptcy Court
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Wednesday, May 15, 2019

Hearing Room 1568

10:00 AM

2:18-20111 Jeremy Wyatt LeClair
Adv#: 2:18-01425 Cortes v. LeClair

Chapter 7

#1.00 HearingRE: [23] Motion to set aside entry of default pursuant to Rule 60(b)(4) and Fed.R.Civ.P.55(c).

Docket 23

Tentative Ruling:

5/14/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Set Aside Entry of Default Pursuant to Rule 60(b)(4) and Fed. R. Civ. P. 55(c) [Doc. No. 23] (the "Motion")
 - a) Memorandum of Points and Authorities in Support of Motion to Set Aside Entry of Default Pursuant to Rule 60(b)(4) and Fed. R. Civ. P. 55(c) [Doc. No. 25]
 - b) Defendant's Declaration in Support of Motion to Set Aside Entry of Default Pursuant to Rule 60(b)(4) and Fed. R. Civ. P. 55(c) [Doc. No. 26] ("Defendant's Decl.")
- 2) Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Set Aside Entry of Default [Doc. No. 29] (the "Opposition")
- 3) Defendant's Response to Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Set Aside Entry of Default [Doc. No. 36] (the "Reply")
 - a) Defendant's Objection to Declaration of I. Donald Weissman Re Plaintiff's Response to Defendant's Motion to Set Aside Default [Doc. No. 37]

I. Facts and Summary of Pleadings

On March 18, 2015, Alvaro Cortes ("Plaintiff") commenced an action in the Los Angeles Superior Court (the "State Court") against Jeremy LeClair (the "Defendant") and other parties (the "State Court Action"). The State Court Action alleged that Defendant fraudulently offered and sold unqualified, non-exempt securities in the form of operating agreements, bridge loans, and promissory notes. On February 24,

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2016, Plaintiff obtained authorization from the State Court to serve Defendant by publication. Plaintiff published the summons in the Los Angeles Daily Journal on March 17, 2016, March 24, 2016, March 31, 2016, and April 7, 2016. On June 21, 2016, Plaintiff obtained entry of default against the Defendant. On March 28, 2017, the State Court entered default judgment against the Defendant in the amount of \$590,908.50 (the "State Court Judgment").

On June 12, 2018, Defendant filed a voluntary Chapter 7 petition in the Western District of North Carolina (the "North Carolina Bankruptcy Court"). On August 29, 2018, the North Carolina Bankruptcy Court found that the proper venue for Defendant's case was the Central District of California, Los Angeles Division. The conclusion was based on a finding that the Defendant currently resides in Hacienda Heights, California. *See* Order on Motion to Dismiss and Motion to Transfer Case [Bankr. Doc. No. 1] at ¶¶ 6–7. Defendant's bankruptcy case was transferred to this court on August 30, 2018.

On November 30, 2018, Plaintiff filed the instant *Complaint to Determine Dischargeability of Debt and for Money Judgment* [Adv. Doc. No. 1] (the "Complaint"). The Complaint alleges that the indebtedness established by the State Court Judgment is excepted from Defendant's discharge pursuant to § 523(a)(2)(A) and (a)(6). The Complaint further alleges that Defendant's discharge should be denied, pursuant to § 727(a)(2)(A), because Defendant transferred substantial assets to others for the purpose of hindering, delaying, and defrauding creditors within one year prior to the filing of the petition.

On February 28, 2019, the Court denied Defendant's motion to dismiss the Complaint. Adv. Doc. Nos. 17 and 19. The Court rejected Defendant's assertion that the Complaint was not filed within the time period imposed by Bankruptcy Rule 4007. The Court also rejected Defendant's contention that the Complaint's allegations under § 523(a)(6) failed to state a claim upon which relief could be granted.

Summary of Papers Filed in Connection with Defendant's Motion to Set Aside the State Court Judgment

Defendant moves to set aside the State Court Judgment. Defendant states that he was never made aware of the State Court Action while it was pending and that he became aware of the State Court Judgment on April 11, 2017 after viewing an online social media post by a former business partner. Defendant's Declaration in Support of Motion to Set Aside Entry of Default Pursuant to Rule 60(b)(4) and Fed. R. Civ. P. 55(c) ("Defendant's Decl.") at ¶ 3. Defendant argues that the State Court Judgment is

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void and must be set aside under Civil Rule 60(b)(4) because he was not personally served and because the State Court lacked personal jurisdiction.

Plaintiff opposes the Motion. First, Plaintiff argues that the Bankruptcy Court must give full faith and credit to the State Court Judgment and therefore lacks the ability to find that the State Court Judgment is void. Second, Plaintiff contends that the State Court Complaint was properly served upon Defendant by publication and that the State Court properly exercised personal jurisdiction over the Defendant. Third, Plaintiff asserts that the instant Motion is an improper substitute for an appeal of the State Court Judgment. Finally, Plaintiff argues that the Motion is untimely. Plaintiff notes that Defendant admits that he became aware of the State Court Judgment on April 11, 2017, and emphasizes that Defendant took no action until the filing of the instant Motion.

In reply, Defendant reiterates his contention that the State Court Judgment is void because the State Court lacked personal jurisdiction over him. Defendant further asserts that Plaintiff's application to serve the State Court Complaint by publication was deficient, because Plaintiff did not sufficiently establish that he was unable to ascertain Defendant's address.

II. Findings and Conclusions

A. The Motion is Denied

Under the *Rooker-Feldman* doctrine, Defendant's attempt to set aside the State Court Judgment as void is not properly before this Court. The Ninth Circuit explains the *Rooker-Feldman* doctrine as follows:

At its core, the *Rooker-Feldman* doctrine stands for the unremarkable proposition that federal district courts are courts of original, not appellate, jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. Thus, it follows that federal district courts have "no authority to review the final determinations of a state court in judicial proceedings." *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.1986). Direct federal appellate review of state court decisions must occur, if at all, in the Supreme Court. *See* 28 U.S.C. § 1257.

Rooker-Feldman is not a constitutional doctrine. Rather, the doctrine arises out of a pair of negative inferences drawn from two statutes: 28 U.S.C. § 1331, which establishes the district court's "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"; and 28 U.S.C. § 1257, which allows Supreme Court review of "[f]inal

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judgments or decrees rendered by the highest court of a State in which a decision could be had."

Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1078 (9th Cir. 2000).

Defendant attacks the validity of the State Court Judgment on various grounds. In so doing, Defendant is effectively asking this Court to review a final determination of the State Court. The *Rooker-Feldman* doctrine prevents this Court from conducting such a review. As stated in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, the *Rooker-Feldman* doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] court proceedings commenced and inviting [federal] court review and rejection of those judgments." 544 U.S. 280, 284 (2005).

The Supreme Court has explained:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy."

Butner v. United States, 440 U.S. 48, 55 (1979).

The State Court Judgment is a property interest which was created and defined by California state law. As long as the State Court Judgment remains valid and enforceable by the courts of the state of California, it is sufficient to establish indebtedness for non-dischargeability purposes. To hold otherwise would not only violate the *Rooker-Feldman* doctrine, but would create the uncertainty and forum-shopping that the Supreme Court warned against in *Butner*. If Defendant wishes to attack the validity of the State Court Judgment, he must do so before the State Court.

The Court's denial of the Motion is consistent with Ninth Circuit precedent. In *MacKay v. Pfeil*, 827 F.2d 540 (9th Cir.1987), MacKay filed an action in federal district court, alleging that a judgment entered by an Alaska state court was void because the court lacked personal jurisdiction. MacKay sought from federal court a declaration that the judgment entered by the state court was void. The *MacKay* court held that the jurisdictional attack upon the state court's judgment was barred by the

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Rooker-Feldman doctrine. *MacKay*, 827 F.2d at

Like the defendant in *MacKay*, the Defendant here mounts a jurisdictional attack upon a judgment entered by a state court. Just as defendant's jurisdictional attack was barred in *MacKay*, it is barred here. [Note 1]

B. Litigation Deadlines

Having reviewed the Joint Status Report filed by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/15/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/15/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU)

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system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit

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binders and trial briefs.

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. The Court will prepare and enter an order denying the Motion, and will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Both Plaintiff and Defendant assert evidentiary objections to declarations filed in support of and in opposition to the Motion. Both declarations pertain to the facts surrounding litigation of the State Court Action. The Court does not rule upon the evidentiary objections since it has not relied upon either declaration in adjudicating the Motion. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections."). The Court decides the Motion purely on a legal issue—whether it is appropriate for Defendant to attack the validity of the State Court Judgment in this Court.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Pro Se

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Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

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2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01425 Cortes v. LeClair

#2.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01425. Complaint by Alvaro Cortes against Jeremy Wyatt LeClair. false pretenses, false representation, actual fraud)),(11 (Recovery of money/property - 542 turnover of property)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Weissman, I)

fr. 3-12-19; 4-16-19

Docket 1

Tentative Ruling:

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See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

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2:18-22144 Hakop Jack Aivazian

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#3.00 HearingRE: [50] Motion to Dismiss Debtor

Docket 50

Tentative Ruling:

5/14/2019

For the reasons set forth below, the Motion to Dismiss is DENIED.

Pleadings Filed and Reviewed

1. Notice of Motion for: an Order Dismissing Debtor's Chapter 7 Bankruptcy Case [Doc. No. 50] (the "Motion to Dismiss")
2. Trustee's Response to Debtor's Motion for an Order Dismissing Debtor's Chapter 7 Bankruptcy Case [Doc. No. 54] (the "Trustee's Response")
3. Declaration of Brad D. Krasnoff in Further Opposition to Debtor's Motion for an Order Dismissing Debtor's Chapter 7 Bankruptcy Case [Doc. No. 58] (the "Krasnoff Decl.")
4. Debtor's *Untimely* Reply to Trustee's Response and Opposition to Debtor's Motion for an Order Dismissing Debtor's Chapter 7 Bankruptcy Case [Doc. No. 64]

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary chapter 11 petition on October 16, 2018 (the "Petition Date"). On January 17, 2019, the Court entered an order converting the case to a case under chapter 7 [Doc. No. 31]. Shortly thereafter Brad Krasnoff was appointed to serve as the chapter 7 trustee (the "Trustee") and continues to serve in that capacity.

On March 13, 2019, the Office of the United States Trustee (the "UST") filed a motion to disgorge fees from Leo Fasen ("Counsel"), the Debtor's chapter 11 bankruptcy counsel [Doc. No. 40]. Counsel did not respond to the UST's motion and on April 19, 2019, the Court entered an Order granting the UST's request and ordering Counsel to return \$8,000 to the Trustee by May 19, 2019 [Doc. No. 49] (the "Disgorgement Order").

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The Debtor now seeks an order dismissing this chapter 7 case. The Debtor states that he owns three parcels of real property as a joint tenant with his non-filing spouse: (i) 1257 N. Oxford Avenue, Pasadena, CA 91104 (the "Oxford Property"), (ii) 1728-1730-1734 E. Woodbury Avenue, Pasadena, CA 91104 (the "Woodbury Property"), and (iii) 1434 N. Sierra Bonita Avenue, Pasadena, CA 91104 (the "Sierra Bonita Property," and together with the Oxford Property and Woodbury Property, the "Properties"). The Debtor further states that he filed his bankruptcy case in good faith to halt foreclosure proceedings against the Properties in an effort to preserve existing equity.

The Debtor states that he has an approved loan modification agreement with the lender on the Sierra Bonita Property and is current on that loan. The Debtor further states that he is currently in escrow for a refinance of the Woodbury Property which will pay off all existing secured claims against that property and leave him with approximately \$162,000 in funds that he intends to use to bring his loan obligations current on the Oxford Property. However, the proposed lender for the refinance will not proceed until this case is dismissed. Accordingly, the Debtor seeks an order dismissing his case so that he can pay secured creditors in full or cure arrears and bring his loans current.

On April 26, 2019, the Trustee filed a timely response highlighting the Debtor and Counsel's failure to address the Disgorgement Order and arguing that absent an adequate disposition of the \$8,000 in disgorged funds, the motion should be denied. Specifically, the Trustee asks the Court to take judicial notice of the Debtor's claims register which establishes that the Debtor has unsecured creditors and argues that he should be afforded the opportunity to administer the \$8,000 in funds for the benefit of those creditors.

On May 1, 2019, the Trustee filed a supplemental declaration stating that on April 30, 2019, after filing his Trustee's Response, he examined the Debtor at a continued 341(a) Meeting of Creditors. The Trustee states that the Debtor testified under oath that no refinance transaction regarding the Woodbury Property had closed either pre- or post-petition and that he believed the Woodbury Property was worth approximately \$1,500,000 with approximately \$900,000 in liens against it. Krasnoff Decl., ¶ 5. The Trustee is investigating the value of the Woodbury Property and the extent of the liens

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against it to determine whether it contains any realizable net equity that the Trustee could administer for the benefit of creditors. *Id.*, ¶ 6. The Trustee further notes that although the claims bar date has not yet passed, eleven claims have been filed to date and unsecured claims appear to be at least \$59,512.24. *Id.*, ¶ 7. Therefore, the Trustee believes that dismissal is not in the best interest of creditors because there is a possibility that funds can be generated for unsecured creditors.

On May 11, 2019, the Debtor filed a late reply asserting that after reviewing the Trustee's Response he requested that his unsecured tax claims be paid off through escrow. Therefore, of the claims presently filed, the proposed refinance will satisfy all claims with the exception of American Express, which the Debtor believes should be discharged and considered "charged off" because of applicable statutes of limitation. The Debtor estimates that he will receive approximately \$129,560.05 from the refinance that he will use to bring his loan obligations with U.S. National Bank current, which will resolve all legitimate claims.

II. Findings of Fact and Conclusions of Law

Section 707(a) permits the dismissal of a chapter 7 case only for cause. 11 U.S.C. § 707(a). A debtor has no absolute right to dismiss a chapter 7 case. *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (B.A.P. 9th Cir 2004); *Leach v. U.S. (In re Leach)*, 130 B.R. 855, 857 n.5 (B.A.P. 9th Cir. 1991). In the Ninth Circuit, "a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as dismissal will cause no 'legal prejudice' to interested parties." *Leach*, 130 B.R. at 857. The debtor bears the burden of proving that dismissal would not prejudice creditors. *Bartee*, 317 B.R. at 366. Where dismissal is prejudicial to creditors, it should not be granted. *Gill v. Hall (In re Hall)*, 15 B.R. 913, 917 (B.A.P. 9th Cir. 1981), citing *In re Int'l Airport Inn P'ship*, 517 F.2d 510 (9th Cir. 1975).

The Debtor has failed to establish "cause" to dismiss this case. As set forth in the Trustee's Response, the Trustee is investigating the value of the Woodbury Property to determine whether there is any equity that he could administer for the benefit of the estate. Since the Trustee has not yet noticed a claims bar date, the universe of general unsecured claims is presently unknown. Therefore, even if the Debtor's proposed refinance might benefit some creditors, the Debtor has not established that dismissal will not prejudice any of his creditors. Additionally, dismissal of the case might be

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prejudicial to the Debtor's creditors because there is no guarantee that the Debtor would pay his debts outside of bankruptcy. *Bartee*, 317 B.R. at 366 (internal citation omitted).

Finally, Counsel has filed a motion to reconsider the Disgorgement Order [Doc. No. 61], which the Court has set for hearing on June 4, 2019 at 11:00 a.m. Even if the Court determines that cause exists to grant that motion, Counsel would still be required to disgorge no less than \$4,500 in funds to the Trustee, which could be administered for the benefit of creditors.

III. Conclusion

For the reasons set forth above, the Motion to Dismiss is DENIED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 HearingRE: [2244] Motion Debtors Notice And Motion To Approve Agreement Nunc Pro Tunc As Of March 21, 2019, By And Between Verity Medical Foundation And Centurion Service Group, LLC; Memorandum Of Points And Authorities; Declaration Of Richard G. Adcock

Docket 2244

Tentative Ruling:

5/14/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice and Motion to Approve Agreement *Nunc Pro Tunc* as of March 21, 2019, by and Between Verity Medical Foundation and Centurion Service Group LLC [Doc. No. 2244] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2243 and 2244 [Doc. No. 2268]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion to Approve Agreement *Nunc Pro Tunc* as of March 21, 2019, by and Between Verity Medical Foundation and Centurion Service Group LLC [Doc. No. 2295]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases.

Summary of Debtors' Motion to Approve Agreement *Nunc Pro Tunc* Between Verity Medical Foundation and Centurion Service Group, LLC

Debtor VHS and Debtor Verity Medical Foundation ("VMF," and together with VHS, the "Debtors") move for an order approving an Auction Agreement (the "Auction Agreement"), between VMF and Centurion Service Group, Inc.

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("Centurion"), *nunc pro tunc* as of March 26, 2019. The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Motion. No opposition to the Motion is on file. Debtors make the following arguments and representations in support of the Motion:

VMF holds a long-term professional services agreement with Sports Orthopedic and Rehabilitation Associates ("SOAR"), dated April 3, 2017 (the "PSA"). Under the PSA, SOAR provides professional medical services to certain medical clinics operated by VMF (the "Clinics").

On October 3, 2018, the Debtors filed a motion to reject the PSA (the "Motion to Reject"). On December 28, 2018, the Court approved a stipulation between the Debtors and SOAR resolving the Motion to Reject (the "SOAR Stipulation"). The SOAR Stipulation provided that during a transition period between January 1, 2019 and March 31, 2019 (the "Transition Period"), VMF would continue to fund the administrative expenses of the Clinics, including the payment of rent, and SOAR would continue to perform patient services without direct compensation under the PSA. The SOAR Stipulation provided that at the end of the Transition Period, either (1) SOAR would purchase from VMF all furniture, fixtures, equipment, and supplies used in the Clinics (the "FF&E"), (2) VMF would remove and dispose of the FF&E, or (3) VMF would sell the FF&E to a third party.

On March 11, 2019, the Debtors filed a motion seeking approval of a Settlement and Asset Purchase Agreement (the "SOAR Agreement") between the Debtors and SOAR. The SOAR Agreement provided for SOAR to purchase certain assets of the Clinic, including the FF&E. The Debtors withdrew the motion after SOAR could not consummate the SOAR Agreement. SOAR's failure to consummate the SOAR Agreement made it necessary for the Debtors to dispose of the FF&E. It was necessary for the Debtors to remove the FF&E from the Clinics prior to March 31, 2019 to avoid the obligation to pay post-petition rent for April 2019.

On March 21, 2019, the Debtors entered into the Agreement with Centurion. Under the Agreement, Centurion was obligated to remove the FF&E from the Clinics by no later than March 31, 2019, and was required to auction the FF&E. In exchange for providing these services, Centurion was entitled to receive 30% of the net proceeds of the auction, plus expenses up to \$20,000.

II. Findings and Conclusions

Section 363(b) authorizes the debtor to sell estate property out of the ordinary

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course of business, subject to Court approval. The debtor must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Debtors have demonstrated sufficient business justification for the auction of the FF&E. Absent the auction, the Debtors would have been required to continue to store the FF&E at the Clinics. The Debtors would have then been required to continue paying rent in excess of \$83,000 per month.

The Debtors are not aware of any liens against any of the FF&E. To the extent that any liens against the FF&E exist, the sale shall be free and clear of such liens, with the liens to attach to the sales proceeds to the same extent, and with the same validity and priority, as they had prior to the sale. Parties with an interest in the FF&E have received notice of the Motion and have not objected. The Court deems the failure of such parties to object to constitute consent to the sale within the meaning of § 363(f) (2). *See, e.g., In re Blixseth*, No. BKR. 09-60452-7, 2011 WL 1519914, at *14 (Bankr. D. Mont. Apr. 20, 2011) (holding that the failure of lienholders to object to a sale free and clear constituted consent to such sale).

The Court finds that *nunc pro tunc* approval of the Auction Agreement is appropriate. The Debtors have not cited, and the Court has been unable to locate, any Ninth Circuit authority regarding the standard applicable to the *nunc pro tunc* approval of an Auction Agreement. In the Ninth Circuit, professionals seeking *nunc pro tunc* approval of an employment application are required to "(1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *In re Atkins*, 69 F.3d 970, 974 (9th Cir. 1995). Analogizing the *Atkins* standard to the instant situation, the Court finds that the auction will significantly benefit the estate. The Court additionally finds that the sudden need to dispose of the FF&E which resulted from the unexpected failure of SOAR to consummate the SOAR Agreement satisfactorily explains the Debtors' failure to obtain prior judicial approval of the Auction Agreement.

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, Debtors shall submit an order incorporating this tentative ruling by reference.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 15, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 15, 2019

Hearing Room 1568

11:00 AM

2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#100.00 Hearing
RE: [11] Motion to Dismiss Adversary Proceeding Notice Of Motion And Defendant's Motion For An Order Dismissing All Three Claims For Relief Asserted By Plaintiff Based On Failure To State A Claim Upon Which Relief Can Be Granted And Failure To Plead Fraud With Particularity, Or, In The Alternative, For A More Definite Statement; Memorandum Of Points And Authorities (Reeder, David)

fr. 5-8-19

Docket 11

***** VACATED *** REASON: CONTINUED 5-22-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 20, 2019

Hearing Room 1568

10:00 AM

2:19-13338 Thea Marie Perkins

Chapter 7

#1.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 29266 Pilgrim Court, Valencia, CA 91354 . (Jafarnia, Merdaud)

Docket 14

Tentative Ruling:

5/17/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$450,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$8,638.56. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 1.9% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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10:00 AM

CONT...

Thea Marie Perkins

Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Thea Marie Perkins

Represented By
Raj T Wadhvani

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 20, 2019

Hearing Room 1568

10:00 AM

2:19-14154 Curtis Lee Rambo

Chapter 7

#2.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Escape, VIN 1FMCU0F75GUB99292 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

5/17/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, May 20, 2019

Hearing Room 1568

10:00 AM

CONT... Curtis Lee Rambo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Curtis Lee Rambo

Represented By
D Justin Harelik

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 20, 2019

Hearing Room 1568

10:00 AM

2:19-15400 Anita Ventimiglia

Chapter 7

#3.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 330 Fairview Ave., South Pasadena, CA 91030 .

Docket 7

Tentative Ruling:

5/17/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. The Court finds that service was properly effectuated upon the Debtor. The Court has reviewed the Debtor's Response [Doc. No. 10] and Motion to Convert Case from Chapter 7 to 13 [Doc. No. 11] (the "Conversion Motion") and finds that the Debtor has failed to present sufficient evidence in support of her arguments. The Court further finds that the Debtor has not advanced any meritorious argument that would prevent this Court from lifting the stay to allow the unlawful detainer action to proceed to final judgment on the merits.

The Court will consider any additional arguments Movant wishes to advance in reply to the Debtor's Response at the hearing.

The tentative ruling is to GRANT the Motion pursuant to 11 U.S.C. § 362(d) (1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on April 10, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward

**United States Bankruptcy Court
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Monday, May 20, 2019

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CONT... Anita Ventimiglia Chapter 7

because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Anita Ventimiglia	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 21, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 HearingRE: [2285] Motion to Approve Compromise Under Rule 9019 With Premier Inc.; Declarations of Anita Chou and David Galfus In Support Thereo

Docket 2285

Tentative Ruling:

5/20/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice and Motion for Approval of Compromise with Premier Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code § 365 [Doc. No. 2285] (the "Motion")
 - a) Notice of Errata to Debtors' Motion for Approval of Compromise with Premier Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code § 365 [Doc. No. 2352]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Approval of Compromise with Premier Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code § 365 [Doc. No. 2389] (the "Response")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2105–2107, 2109–2112 and 2114 [Doc. No. 2205]
- 3) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases.

Debtors seek approval of a settlement agreement (the "Settlement Agreement") with Premier, Inc. and certain of its subsidiaries (collectively, "Premier"). On May 15, 2019, the Court approved the Debtors' motion to file under seal various exhibits in

**United States Bankruptcy Court
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

support of the motion to approve the Settlement Agreement. Doc. No. 2382.

The Settlement Agreement resolves a series of prepetition and postpetition disputes between Premier and the Debtors over the parties' performance and obligations under seven different contracts. Premier is a public company that uses data and analytics to improve the manner in which healthcare is delivered to patients. Prior to the Petition Date, the Debtors and Premier entered into multiple agreements (collectively, the "Premier Agreements").

Pursuant to an *Amended and Restated Limited Partnership Agreement*, effective as of October 1, 2013 (the "LP Agreement"), VHS holds certain Class B Common Units (the "Units"), reflecting a limited partner interest in Premier LP. As of the Petition Date, VHS held 222,809 of such Units. Pursuant to the LP Agreement and the *Exchange Agreement*, effective as of October 1, 2013 (the "Exchange Agreement"), approximately 74,270 of the Units became exchangeable for a like amount of Class A Common Stock in Premier, Inc. (the "Tradeable Stock"), starting on October 31 of each year for a seven-year period (the seven-year period commenced in October 2013). The remaining Units are scheduled to vest on October 31, 2018 (74,270 Units), October 31, 2019 (74,270 Units) and October 31, 2010 (74,269 Units).

Pursuant to a *GPO Participation Agreement*, effective as of October 1, 2013 (the "GPO Participation Agreement") and a *Tax Receivable Agreement*, effective as of October 1, 2013 (the "Tax Receivable Agreement"), VHS is entitled to certain periodic distributions in exchange for, among other things, (1) VHS' continued participation in Premier's purchasing program under the GPO Participation Agreement and (2) VHS' continuation as a limited partner in Premier LP.

Pursuant to a *Performance Suite Solutions Subscription Agreement*, dated November 14, 2011 (the "Subscription Agreement"), Premier provides VHS and its hospitals the right to license Premier's technology programs and systems, including programs used to manage patient healthcare information and medical records.

Some of the distributions owed under the GPO Participation Agreement accrued within ninety days prior to the Petition Date, but were not distributed to VHS and are currently being held by Premier (the "Prepetition Distributions"). The Debtors have asserted that the Prepetition Distributions are recoverable as an avoidable preference under §§ 549 and 550. Premier has asserted that it has certain defenses to such claims, including setoff and/or recoupment.

Subsequent to the Petition Date, additional distributions accrued under the GPO Participation Agreement, which have not been distributed to VHS and are currently being held by Premier (the "Postpetition Distributions"). Premier has asserted that it

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CONT... Verity Health System of California, Inc.

Chapter 11

has rights and interests in the Postpetition Distributions superior to the Debtors' interest in such funds. The Debtors have asserted that Premier's retention of the Postpetition Distributions constitutes a violation of the automatic stay.

Subsequent to the Petition Date, Premier has continued to provide information technology, group purchasing, and other services to VHS pursuant to the Premier Agreements. The Debtors have paid certain of Premier's invoices in the ordinary course of business. The Debtors continue to use Premier's services to operate their hospitals pursuant to the GPO Purchasing Agreement and the Subscription Agreement. The Debtors have advised Premier that they wish to continue using Premier's services under the Premier Agreements going forward, particularly as the Debtors facilitate the sale and transfer of the remaining hospitals.

Since the Petition Date, Premier has consistently disputed and continues to dispute VHS' ability to exchange its Units under the LP Agreement and the Exchange Agreement unless and until the Premier Agreements are assumed with Premier's consent, and all defaults thereunder are cured.

Premier asserts claims against the Debtors in the amount of no less than \$3.1 million (the "Premier Prepetition Claim") that Premier alleges is due and owing under the Premier Agreements as of the Petition Date. Premier asserts that the Premier Prepetition Claim must be paid as a cure prior to the assumption of the Premier Agreements. On March 28, 2019, Premier Inc., Premier GP, PHSI and Premier LP each filed separate proofs of claim in the amount of \$3,122,167.78, plus additional damages, fees, costs, and expenses. The Debtors dispute the amount and grounds for allowance of the Premier Prepetition Claim.

Throughout the Debtors' cases and in connection with the Debtors' sales of its hospitals, Premier has consistently maintained that any assumption and assignment of the Premier Agreements, whether in the context of a sale of the Debtors' hospitals or otherwise, would first require the payment of the Premier Prepetition Claim and Premier's consent to any assumption and assignment. Premier Asserts that its consent is required given that the Premier Agreements are enterprise agreements, and in some cases enterprise licenses, entered into as between VHS and Premier, rather than any particular hospital or other Debtor and given that the Premier Agreements include rights to intellectual property licenses, partnership interests, and personal services from Premier.

The proposed Settlement Agreement resolves the current disputes between the parties and contemplates, among other things, that the Debtor will be able to:

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Verity Health System of California, Inc.

Chapter 11

- 1) Preserve and continue their relationship with Premier under the Premier Agreements to the benefit of hospital operations and the sale process;
- 2) Resolve the dispute with respect to the Premier Prepetition Claim;
- 3) Realize the substantial value of the Debtors' currently exchangeable Units, by permitting an exchange to occur on April 30, 2019, subject to final approval of the Settlement Agreement;
- 4) Realize substantial value on account of the Units that vest in October 2019 and October 2020, by virtue of VHS' ability to sell the Units to current Limited Partners, and potentially sell to other parties acceptable to Premier GP; and
- 5) Receive periodic distributions under the GPO Participation Agreement and the Tax Receivable Agreement.

The material terms of the Settlement Agreement are as follows:

- 1) VHS shall exchange 74,270 of its Units for Tradeable Stock on April 30, 2019, and waives and shall not assign or exercise any right of first refusal under the LP Agreement and Exchange Agreement relating to this exchange.
- 2) VHS will assume the Premier Agreements as of the Execution Date of the Settlement Agreement and shall pay Premier a cure amount of \$2 million. Payment of the cure amount will be derived from the exchange of the Units.
- 3) Premier shall remit to VHS the disputed distributions plus any additional accrued amounts due and owing to VHS under the Premier Agreements.
- 4) VHS shall have the ability to sell its Units for cash, subject to certain conditions.
- 5) The GPO Participation Agreement shall terminate upon the later of (a) the transitioning of the Debtors' hospitals to new buyers, (b) the expiration or earlier termination of the last agreement under which the Debtors operate or manage their hospitals for any buyer, or (c) the date upon which the Debtors cease operation of the hospitals (the "Operations Termination Date").
- 6) The Subscription Agreement shall terminate upon the later of (a) the Operations Termination Date or (b) the expiration or earlier termination of the last transition services agreement between the purchaser of any of the Debtors' hospitals.
- 7) Until they have terminated, VHS shall make monthly payments under the GPO Participation Agreement and the Subscription Agreement in the reduced amount of \$112,000 per month.

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CONT... Verity Health System of California, Inc.

Chapter 11

- 8) The parties fully release each other, and Premier will withdraw its proof of claim.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. Absent the Settlement Agreement, Premier would assert its proof of claim in an amount in excess of \$3.1 million. Litigation would be accompanied by significant delay and inconvenience for the Debtors, as it would impair the ability of the Debtors to realize value on account of the Units until the litigation had been concluded. Litigation would also end the parties' otherwise productive business relationship. The litigation would involve fact-intensive issues not susceptible of easy resolution, such as whether Premier's assertion of rights in the Disputed Distributions is in the nature of a recoupment under a single integrated transaction, or alternatively whether Premier's actions constituted a violation of the automatic stay.

Difficulties to be Encountered in the Matter of Collection

This factor weighs in favor of approving the Settlement Agreement. Absent the Settlement Agreement, Premier would continue to exert contractual and legal rights,

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CONT... Verity Health System of California, Inc.

Chapter 11

as well as commercial leverage, with respect to the Disputed Distributions and the Units. This would delay and impair the Debtors' ability to receive value on account of the Disputed Distributions and the Units.

Paramount Interests of Creditors

This factor weighs in favor of approving the Settlement Agreement. The Committee does not object to the Settlement Agreement, and no creditors have objected to the Settlement Agreement.

Likelihood of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. As discussed, the Settlement Agreement resolves a number of complicated and intertwined issues. Litigation of these issues would be factually intensive and expensive, and would provide only minimal upside to the estate. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Verity Health System of California, Inc.

Chapter 11

John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

**United States Bankruptcy Court
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Tuesday, May 21, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing

RE: [2274] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors' Notice of Motion and Second Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances; Declaration of Samuel R. Maizel

Docket 2274

Tentative Ruling:

5/20/2019

For the reasons set forth below, the agreement between the Debtors and the Committee with respect to the extension of the Debtors' exclusivity period is APPROVED.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Second Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 2274] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2265, 2266, 2267, 2270, 2273 and 2274 [Doc. No. 2294]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Notice of Motion and Second Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 2316]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors move for entry of an order extending the exclusivity periods to file a

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

Chapter 11 Plan and solicit acceptances thereof for 120 days, through and including August 26, 2019 (filing a plan) and October 25, 2019 (obtaining acceptances).

On April 17, 2019, the Court held a hearing at which it approved the sale of substantially all assets of the Debtors' four remaining hospitals to Strategic Global Management ("SGM"). Debtors state that they anticipate filing a plan after the sale to SGM closes. That sale is subject to review by the California Attorney General and therefore cannot close before the current exclusivity period terminates on April 28, 2019.

The Debtors and the Official Committee of Unsecured Creditors (the "Committee") have reached an agreement regarding the extension requested in the Motion. Under the agreement, the Committee will not oppose a 90-day extension of exclusivity—that is, through and including July 27, 2019 (for filing a plan) and September 25, 2019 (for obtaining acceptances). The Committee has until day 75—July 12, 2019 (the "Committee Objection Deadline")—to object to the full 120-day extension requested in the Motion. If the Committee objects by the Committee Objection Deadline, then the Debtors may notice the matter for hearing. If the Committee fails to object by the Committee Objection Deadline, then the Committee shall be deemed to have waived its right to object to the full 120-day extension requested in the Motion.

No other objections to the Motion are on file.

II. Findings and Conclusions

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the exclusivity period in accordance with the agreement reached between the Debtors and the Committee. An extension of the exclusivity period is appropriate given that the sale of the hospitals to SGM has not yet closed.

The exclusivity period for the Debtors is extended through and including July 27, 2019 (for filing a plan) and September 25, 2019 (for obtaining acceptances). If the Committee objects by the Committee Objection Deadline, the Debtors shall notice the Motion for a further hearing. If the Committee fails to object by the Committee

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Objection Deadline, the Committee's objection shall be deemed withdrawn and the exclusivity period shall then be extended through and including August 26, 2019 (filing a plan) and October 25, 2019 (obtaining acceptances) without further notice or hearing.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

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Sam J Alberts

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#4.00 Hearing
RE: [1914] Motion Notice Of Motion And Motion Of (1) Waheed Wahidi For Authorization To File A Class Proof Of Claim On Behalf Of Claimants Similarly Situated, And (2) Ernesto Madrigal For Authorization To File A Class Request For Payment Of Administrative Expense On Behalf Of Claimants Similarly Situated

fr. 4-24-19

fr. 5-8-19

Docket 1914

Tentative Ruling:

5/20/2019

Appearances required.

Movants have not adduced sufficient evidence in support of Rule 23's commonality and typicality prongs. Movants should be prepared to explain how the additional discovery they seek will yield facts sufficient to address the Court's concerns, set forth herein.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of (1) Waheed Wahidi for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated, and (2) Ernesto Madrigal for Authorization to File a Class Request for Payment of Administrative Expense on Behalf of Claimants Similarly Situated [Doc. No. 1914] (the "Motion")
- 2) Debtors' Memorandum in Opposition to [Motion] [Doc. No. 2260] (the "Opposition")
- 3) Reply in Support of [Motion] [Doc. No. 2355] (the "Reply")

I. Facts and Summary of Pleadings

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On August 31, 2018 (the “Petition Date”), Verity Health Systems of California (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

Waheed Wahidi (“Wahidi”) moves for an order authorizing Wahidi to file a class prepetition unsecured proof of claim on behalf of all creditors similarly situated as Wahidi. Ernesto Madrigal (“Madrigal”) moves for an order authorizing Madrigal to file a request for payment of administrative expenses on behalf of all creditors similarly situated as Madrigal. The Debtors oppose the Motion.

A. The Prepetition State Court Complaint

On June 21, 2018, Wahidi, on behalf of himself and all other employees similarly situated, filed a complaint against certain of the Debtors in the Superior Court of the State of California for the County of San Mateo (the “State Court”), alleging *inter alia* violations of the California Labor Code, California Business and Professions Code, and applicable Wage Orders issued by the California Industrial Welfare Commission. Wahidi filed a First Amended Complaint (the “State Court Complaint”) on June 26, 2018.

The State Court Complaint alleges that the Debtors, as a matter of established and uniform company policy, violated applicable California wage and hour law by:

- 1) Rounding down the recorded time of hourly employees;
- 2) Failing to provide workers meal breaks;
- 3) Failing to provide workers rest breaks;
- 4) Failing to provide itemized waged statements that were compliant with applicable law; and
- 5) Failing to pay workers all wages due as a result of the unlawful rounding, meal, and rest break policies.

See generally State Court Complaint [Doc. No. 1914, Ex. A].

The State Court Complaint seeks recovery of unpaid wages, prejudgment interest, attorneys’ fees, injunctive relief, and penalties. The proposed class consists of “[a]ll California citizens employed by [Debtors] as hourly-paid employees” during the four years preceding the filing of the State Court Complaint. *See* State Court Complaint at ¶¶ 3, 25. The State Court did not certify the proposed class prior to the Petition Date.

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B. Summary of the Motion

Movants make the following arguments and representations in support of the Motion:

The State Court Complaint includes claims filed pursuant to the Private Attorneys General Act ("PAGA"), codified at Cal. Lab. Code §§ 2699 *et seq.* In filing a claim pursuant to the PAGA, an employee is acting as an agent of the State of California, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 394 (2014), and so is not required to satisfy class action requirements, *Arias v. Superior Court*, 46 Cal. 4th 969, 975 (2009). For these reasons, Wahidi has an absolute right to file a class claim with respect to the PAGA claims. *In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS 2579 *7-12 (Bankr. D. Del. June 22, 2016).

The factors supporting application of Bankruptcy Rule 7023 to the claims administration process are satisfied here. First, a class proof of claim will benefit the claims administration process. The proposed class consists of approximately 7,300 claimants. Collective resolution through a class proof of claim will be more efficient. Many of the claims are relatively small, making them economically infeasible for claimants to prosecute. Second, the Debtors provided notice of the claims bar date (the "Bar Date") to employees that were employed as of the Petition Date, but did not provide notice of the Bar Date to former employees. Absent class certification, employees who did not receive notice of the Bar Date will be unable to vindicate their rights.

The elements of numerosity, commonality, typicality, and adequacy set forth in Civil Rule 23(a) are satisfied. With respect to numerosity, joinder of approximately 7,300 current and former employees would be impractical. With respect to commonality, the claims are based on established company policies applicable to all employees. Courts have recognized that employee wage and rest break claims are amenable to class treatment when the claims are based on a uniform company policy. *Nguyen v. Baxter Healthcare Corp.*, 275 F.R.D. 596, 600-01 (C.D. Cal. 2011); *Driver v. AppleIllinois, LLC*, 265 F.R.D. 293, 303 (N.D. Ill. 2010). With respect to typicality, Wahidi has been injured in the same manner as other proposed class members, because Wahidi was an hourly employee who was subjected to the Debtors' unlawful wage and hour policies. With respect to adequacy, Wahidi has no interests that diverge from those of the class, and his claims are typical of the claims of the class.

Civil Rule 23(b)(1)(B) is satisfied. Rule 23(b)(1)(B) provides that a class action

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may be maintained if prosecuting separate actions by individual class members would create a risk of "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." Courts have found that Rule 23(b)(1)(B) is satisfied in "limited fund" cases—that is, "an action in which any recovery will come from a fixed pool of assets that is or may be insufficient to satisfy all claims against the fund." 5 Moore's Federal Practice—Civil § 23.42[2][a] (2019). This proceeding qualifies as a limited fund case because the Debtors intend to liquidate all their assets.

In the alternative, Civil Rule 23(b)(3) is satisfied because common questions of law or fact predominate over any individual questions and a class action is the superior method to adjudicate the action fairly and efficiently. A class action is superior because it is not economically feasible for most claimants to individually prosecute their claims.

The unlawful conduct alleged in the State Court Complaint continued postpetition. The resulting monetary claims are administrative expenses under § 503(b). *Gonzalez v. Gottlieb (In re Metro Fulfillment, Inc.)*, 294 B.R. 306 (BAP 9th Cir. 2003). The cause for authority to file a prepetition class proof of claim is also cause for authority to file a postpetition class request for payment of an administrative expense. Wahidi cannot serve as the class representative because he was not a postpetition employee. Madrigal, who was a postpetition employee, should be authorized to file a class request for payment of an administrative expense.

If the Court does not permit Wahidi to file a class proof of claim, the Court should (1) extend the bar date for members of the class to file individual claims and (2) establish a practical process for collectively adjudicating the claims. The process should be similarly to that used in *In re Buffets LLC's*, No. 16-50557-RBK (Bankr. W.D. Tex.). In *Buffets*, a notice and consent form was mailed to all putative class members to participate in the bankruptcy proceedings. All consent forms had to be filed within 30 days. The procedures elicited over 1,600 unpaid wage claims.

C. Summary of the Debtors' Opposition to the Motion

The Debtors make the following arguments and representations in Opposition to the Motion:

Wahidi and Madrigal cannot satisfy the elements of Civil Rule 23. The Motion relies on nothing more than the State Court Complaint, which is overwhelmingly

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conclusory in its allegations. "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his [or her] compliance with the Rule—that is, he [or she] must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Movants cannot satisfy Civil Rule 23's commonality requirement. Movants allege that as a matter of uniform company policy, the Debtors unlawfully rounded down the recorded time of hourly employees, failed to provide meal and rest breaks, and engaged in other violations of the California Labor Code.

Contrary to Movants' allegations, the Debtors lacked uniform policies with respect to rounding and meal and rest breaks. For example, within Seton, meal and rest break policies vary by department. At In-Patient Units, meal and rest breaks are typically assigned, with the first rest break typically being scheduled within two hours of the start of the shift, the first meal break occurring before the fifth hour of the shift, and the last rest break occurring before the seventh hour. Sharrer Decl. at ¶ 22. In the Emergency Department, meal and rest breaks start when the break nurse arrives at 11:00 a.m., and are assigned by the charge nurse based upon availability. *Id.* In the Gero-Psych Unit, employees choose the assignment they want and pre-assigned meal or rest break times are written on the assignment sheet. *Id.*

Policies at St. Francis also varied by department. *Id.* at ¶ 25. Depending upon the department in which an employee worked, rest breaks could be assigned by a supervisor or Charge Nurse; employees could be required to arrange coverage when taking a rest break; or employees were permitted to take breaks depending upon workflow. *Id.* at ¶ 26.

Movants have failed to present facts showing that their claims are typical of other class members. Movants do not provide any details as to their personal injuries or any indication that such injuries are common to other hourly employees. Debtors' preliminary investigation shows that Movants do not have claims typical to the rest of the class because Movants were not harmed by the Debtors' policies. With respect to the alleged rounding down of employee hours, Wahidi was covered by a collective bargaining agreement (the "CBA") negotiated by the California Nurses Association (the "CNA") during his employment at Seton. *Id.* at ¶ 9. The CBA contained policies with respect to the rounding of employee time. At all times during his employment, Wahidi was paid in accordance with the rounding policies negotiated by the CNA. *Id.* at ¶ 13.

With respect to the alleged failure to provide meal and rest breaks, hourly

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employees such as Wahidi who missed meal or rest breaks could claim a penalty by filing the appropriate paperwork. *Id.* at ¶ 29. During the course of Wahidi's employment, he was paid \$1,923.52 for missed meal or rest break penalties. *Id.* at ¶ 34. When Wahidi was terminated for policy violations, the CNA did not pursue a grievance over his final pay. *Id.* at ¶ 32. Therefore, Wahidi was not injured by the Debtors' meal and rest break policies. With respect to the alleged failure to provide compliant pay stubs, Wahidi's paystubs included the nine categories of information required by Cal. Lab. Code § 226(a). *Id.* at ¶ 37. Similarly, Madrigal was paid \$294.60 for missed meal or rest break penalties and Madrigal's union did not file a grievance over his final pay when Madrigal was terminated. *Id.* at ¶ 33 and 35. Like Wahidi, Madrigal was not injured by the Debtors' policies.

Movants have not shown that they can adequately represent the class. First, Wahidi and Madrigal are former employees. They cannot be class representatives on behalf of current employees. The proposed class proof of claim seeks injunctive relief on behalf of the Debtors' current employees. As former employees, Wahidi and Madrigal have no incentive or interest to pursue such relief. Second, Wahidi's employment terminated in October 2017. This means that Wahidi cannot personally assert a priority or administrative expense claim, and thus that Wahidi cannot effectively represent class members entitled to assert such claims. Third, Wahidi and Madrigal were members of nursing unions at specific locations during their employment. Other class members belong to other unions or are not represented by a union. The wage and employment requirements at issue vary depending on whether employees are union or non-union. Wahidi and Madrigal are not typical of non-union employees.

Movants have not satisfied the requirements of Rule 23(b). Wahidi's attempt to certify a class under Rule 23(b)(1) fails because there is no danger that declining to certify a class will expose class members to the risk of inconsistent individual adjudications. The putative class members' claims are extremely varied given that the Debtors lacked routine policies with respect to rounding, meal periods, and rest breaks.

Movants' alternative request for certification under Rule 23(b)(3) fails. Movants have not shown that questions of law or fact common to class members predominate over questions affecting only individual members, or that a class action is superior to other methods of adjudication. With respect to predominance, the Debtors' rounding, meal period, and rest break policies varied by department. Consequently, the claims of each individual class member vary widely; these individualized issues relative to

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causation and damages defeat predominance. Given these individualized issues, a class proof of claim is not superior to individual proofs of claim.

The Court should not permit class treatment of Wahidi and Madrigal's claims because there is no merit to the assertion that the Debtors violated applicable wage and hour law. Wahidi and Madrigal were both subject to CBAs which set forth terms for working conditions and provided for premium rates of pay for overtime hours. Cal. Lab. Code § 514 provides that an employee subject to a CBA meeting certain requirements may not pursue an overtime claim. This CBA exemption to the Labor Code is intended to afford additional flexibility with regard to the terms of employment of employees whose interests are protected by a collective bargaining agreement. *Araquistain v. Pacific Gas & Electric Co.*, 229 Cal.App. 4th 227, 238 (Cal. 2014).

Wahidi and Madrigal's claims are also pre-empted by § 301 of the Labor Management Relations Act (the "LMRA"). Under the LMRA, "suits for violation of contracts between an employer and a labor organization" fall within the exclusive jurisdiction of the federal courts. 29 U.S.C. § 185. To ensure uniform interpretation of labor contracts, any state law claim that requires interpretation of a CBA or that is "inextricably intertwined" with a CBA is pre-empted. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985). Wahidi and Madrigal's claims are really about an employer alleging failing to pay required overtime pay by rounding down hours worked and by depriving Wahidi and Madrigal of meal and rest breaks. Because adjudication of the claims would require interpretation of the CBAs which specify the terms of overtime pay, the claims are pre-empted.

When pre-emption applies, a plaintiff can bring a § 301 claim only if he or she has exhausted the CBA's grievance procedure. The unions representing Wahidi and Madrigal did not invoke the arbitration process with respect to the claims at issue, either individually or on a group basis. Sharrer Decl. at ¶ 32–33.

The Ninth Circuit recently held that where, as here, an employer qualifies for a CBA exemption to a labor code requirement, any class claim asserted by an employee is automatically pre-empted by the LMRA. *See Curtis v. Irwin Industries, Inc.*, 913 F.3d 1146, 1153–55 (9th Cir. 2019). The *Curtis* court specifically rejected the idea that Cal. Lab. Code § 510 gave employees non-negotiable state rights to overtime, independent of any interpretation of the relevant CBA. Wahidi and Madrigal's claims are pre-empted, which not only dooms the claims, but makes Wahidi and Madrigal atypical of the putative class.

There is no merit to Wahidi's contention that he is not required to satisfy class

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action requirements because his claims are filed pursuant to PAGA. "[T]here have been numerous rulings in [the Central District of California] holding that PAGA claims must comply with Rule 23 guidelines and failure to move for class certification will result in dismissal." *Raphael v. Tesoro Ref. & Mktg. Co. LLC*, No. 2:15-CV-02862-ODW, 2015 WL 5680310, at *2 (C.D. Cal. Sept. 25, 2015); *see also Adams v. Luxottica U.S. Holdings Corp.*, No. SA CV 07-1465 AHS, 2009 WL 7401970, at *2 (C.D. Cal. July 24, 2009) ("California state law cannot alter federal procedural and jurisdictional requirements.").

Further, Wahidi's PAGA claim is legally insufficient. Wahidi's required pre-suit notice letter to the Labor and Workforce Development Agency (the "LWDA") was statutorily ineffective. The letter did not contain "facts and theories to support the alleged violation," *Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1056 (9th Cir. 2015), but instead provided only "a string of legal conclusions with no factual allegations or theories of liability to support them." *Id.* at 1057. The letter was therefore "insufficient to allow the [LWDA] to intelligently assess the seriousness of the alleged violations." *Id.*

D. Summary of Wahidi and Madrigal's Reply in Support of the Motion

Wahidi and Madrigal make the following arguments and representations in their reply in support of the Motion:

The Debtors' objection is substantively a premature summary judgment motion on the merits of the underlying claims. As the merits of the underlying claims are not at issue in connection with the Motion, Movants will not take the bait. The only issue before the Court is whether it makes sense for a class representative to be appointed to have standing to resolve the bankruptcy claims which arise from the violations of law alleged in the Complaint.

There is no dispute that the Debtors served notice of the bar date only upon employees who remained employed as of the Petition Date, and did not provide notice to former employees. The fact that former employees did not receive notice is a compelling reason for class treatment of the claim. Permitting a class claim will not adversely affect the administration of the estate because the Debtors have not yet filed a plan.

If the Court concludes that additional evidence is required for the Movants to satisfy Rule 23's requirements of numerosity, commonality, typicality, and adequacy, the Court must permit additional discovery. Movants concede that the Motion is not

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supported by detailed evidentiary support for certain factual allegations, but there is a very good reason—the Debtors filed their petitions two months after the Complaint was filed and all discovery was stayed. If the Court concludes that there are unresolved factual issues that must be resolved for the Motion to be granted, then due process requires that Movants be afforded the opportunity to take formal discovery with respect to those unresolved factual issues. *See, e.g., Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1094 n.5 (9th Cir. 2011) (stating that "the propriety of a class action cannot be determined in some cases without discovery" and that "to deny discovery in such cases would be an abuse of discretion").

II. Findings and Conclusions

Class certification is governed by Civil Rule 23. Bankruptcy Rule 7023 provides that Civil Rule 23 “applies in adversary proceedings.” Under Bankruptcy Rule 9014(c), the Court has discretion to apply Bankruptcy Rule 7023 to the claims administration process. Courts have developed a three-factor framework to guide the exercise of this discretion:

- 1) whether the class was certified pre-petition;
- 2) whether the members of the putative class received notice of the bar date; and
- 3) whether class certification will adversely affect the administration of the estate.

In re Chaparral Energy, Inc., 571 B.R. 642, 646 (Bankr. D. Del. 2017).

These factors were first articulated in *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) and are commonly referred to as the “*Musicland* factors.” “No one factor is dispositive; a factor may take on more or less importance in any given case.” *Chaparral Energy*, 571 B.R. at 646.

Only if the Court determines that it is appropriate to apply Bankruptcy Rule 7023 to the claims administration process does the Court proceed to determine whether the requirements of Civil Rule 23 have been satisfied. As explained by the *Chaparral Energy* court:

Whether to permit a class action proof of claim is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, the court must decide whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Second, the

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court must determine whether the requirements of Federal Rule 23 have been satisfied, such that a class proof of claim may properly be filed.

Id. (internal citations omitted); *see also Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012) (“Civil Rule 23 factors do not become an issue until the bankruptcy court determines that Rule 7023 applies by granting a Rule 9014 motion. The issue on such a motion centers more directly on whether the benefits of applying Rule 7023 (and Civil Rule 23) are superior to the benefits of the standard bankruptcy claims procedures.”).

Careful consideration of the *Musicland* factors is necessary because “class certification may be ‘less desirable in bankruptcy than in ordinary civil litigation.’” *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005). Consequently, “[e]ven class actions that were certified prior to the filing for bankruptcy may ... be disallowed.” *Id.*

In *In re First Alliance Mortgage Co.*, the District Court for the Central District of California stated that “class action devices ... are particularly appropriate” in bankruptcy proceedings, and that “the party opposing the use of class devices [bears] the burden.” *First All. Mortg. Co.*, 269 B.R. 428, 445 (C.D. Cal. 2001). In the eighteen years since it was published, no decision—either published or unpublished—has cited *First Alliance* for this proposition.¹ More recent decisions within the Ninth Circuit have approached class proofs of claim in a manner inconsistent with the standard set forth in *First Alliance*.

For example, in *In re Aughney*, the court expunged a class proof of claim, reasoning that the “essential problem with a class proof of claim is that class action procedures often conflict with established bankruptcy procedures.” *Aughney*, No. 10-12666, 2011 WL 479010, at *1 (Bankr. N.D. Cal. Feb. 4, 2011). The court held that “class claims can be allowed, especially where a class was certified before bankruptcy or principles of equity and simple justice militate in favor of a claim being pursued on behalf of a class,” but emphasized that a “prerequisite for allowance ... is that the proponent must seek and obtain a determination of the Bankruptcy Court that Rule 7023 of the Federal Rules of Bankruptcy Procedure be made applicable to the claims process.” *Id.* In *Westfall v. MII Liquidation Inc.*, the District Court upheld the Bankruptcy Court’s denial of class certification, explaining that “bankruptcy courts have broad discretion to allow or disallow such class claims.” *Westfall*, No. 06-CV-02343-BENNLIS, 2007 WL 2700951, at *4 (S.D. Cal. Sept. 11, 2007).

Courts outside the Ninth Circuit have also declined to follow *First Alliance*.

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Instead of placing the burden upon the party opposing class certification, the Fourth Circuit Court of Appeals held that it was appropriate for the Bankruptcy Court to weigh “the benefits and costs of class litigation against the efficiencies created by the bankruptcy claims resolution process.” *Gentry v. Siegel*, 668 F.3d 83, 92 (4th Cir. 2012). The Fourth Circuit found that “[e]ach bankruptcy case must be assessed on a case-by-case basis to determine whether allowing a class action to proceed would be superior to using the bankruptcy claims process.” *Gentry*, 668 F.3d at 93. *First Alliance*’s burden standard is also fundamentally inconsistent with the *Musicland* factors, which have been widely adopted.

The Court declines to follow *First Alliance* for the propositions that class actions are particularly appropriate in bankruptcy and that the party opposing a class proof of claim bears the burden of proof. In determining whether application of Civil Rule 23 to the claims administration process is warranted, the Court will apply the *Musicland* factors, keeping in mind that “[w]hether to permit a class action proof of claim is a matter of discretion.” *Chapparal Energy*, 571 B.R. at 646.

A. The *Musicland* Factors Support Applying Civil Rule 23 to the Claims Administration Process

As set forth below, the Court finds that the *Musicland* factors weigh in favor of invoking Civil Rule 23.

1. Factor One: Whether the Class was Certified Prepetition

The putative class was not certified prepetition, so the first *Musicland* factors weighs against applying Civil Rule 23 to the claims administration process. However, as noted above, no single factor is dispositive, and courts have exercised their discretion to apply Civil Rule 23 even where the class has not been certified prepetition. *See, e.g., In re Kaiser Group Intern., Inc.*, 278 B.R. 58, 62–63 (Bankr. D. Del. 2002) *Gentry v. Siegel*, 668 F.3d 83, 91 (4th Cir.2012); *In re MF Glob. Inc.*, 512 B.R. at 763–65; *In re Connaught Group, Ltd.*, 491 B.R. 88, 98–100 (Bankr. S.D.N.Y. 2013).

2. Factor Two: Whether Putative Class Members Received Notice of the Bar Date

Where putative class members have received actual notice of the bar date, the second factor weighs against applying Civil Rule 23 to the claims administration process. *Musicland*, 362 B.R. at 655. The reason is that such putative class members

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have an opportunity to share in the distribution from the debtors' estate by filing a proof of claim. *Id.* By contrast, putative class members who did not receive actual notice of the bar date lack the ability to file a proof of claim. The filing of a class proof of claim vindicates the ability of such putative class members to assert a claim against the estate.

Here, the proposed class consists of “[a]ll California citizens employed by [Debtors] as hourly-paid employees” during the four years preceding June 21, 2018, the date of the filing of the State Court Complaint. *See* State Court Complaint at ¶¶ 3, 25. The Debtors provided actual notice of the bar date to employees that were employed as of the Petition Date but not to former employees. Because not all members of the putative class received actual notice of the bar date, the second factor weighs in favor of applying Civil Rule 23 to the claims administration process.

The Debtors assert that they were not required to provide actual notice to all putative class members. The Debtors cite *In re Mirant*, 321 B.R. 189, 199 (Bankr. N.D. Tex. 2005), in which the Court declined to apply Civil Rule 23 to the claims administration process even though not all putative class members had received actual notice of the bar date. The *Mirant* court reasoned that actual notice was not required because “*Mirant*’s chapter 11 case has been well-publicized, and *Mirant* is willing to rely on that publicity and its published notice to bar later claims by class members.” *Mirant*, 321 B.R. at 199.

The Debtors’ reliance upon *Mirant* is misplaced. *Mirant*’s holding that actual notice upon putative class members was not required was based on the fact that the interests of the putative class members were being pursued “by various arms of local and state governments and [the Federal Energy Regulatory Commission].” *Id.* Here, by contrast, there is nothing in the record indicating that any government entity is taking action to vindicate the rights of the Debtors’ hourly employees.

Debtors also rely upon *In re Circuit City Stores, Inc.*, 439 B.R. 652, 658 (E.D. Va. 2010). Like *Mirant*, *Circuit City* also involved a situation in which the Bankruptcy Court declined to apply Civil Rule 23 even though not all putative class members had received actual notice of the bar date. However, in reaching its decision, the Bankruptcy Court did not apply the *Musicland* factors. Instead, the court relied upon a different set of factors applicable in the Fourth Circuit. Thus, *Circuit City* is of limited utility in ascertaining whether the second *Musicland* factor has been satisfied.

3. Factor Three: Whether Class Certification Will Adversely Affect the Administration of the Estate

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In applying the third factor, courts consider whether class certification would delay or interfere with the debtor's ability to make distributions under a plan. For example, in *Musicland*, the court found that the third factor weighed against invoking Civil Rule 23 where the class certification motion was filed after the court had begun the confirmation hearing. *Musicland*, 362 B.R. at 656. The court reasoned that the late introduction of a significant claim would delay the debtor's ability to confirm a plan by creating unforeseen issues as to plan feasibility. *Id.* Applying the same logic, the court in *Chapparral Energy* held that certification would not interfere with the plan, because the debtors intended to proceed with confirmation and consummation of the plan notwithstanding an outstanding objection to the class proof of claim. *Chapparral Energy*, 571 B.R. at 648–49.

Here, the Debtors have not yet filed a plan. Nor does it appear that the filing of a plan is imminent. Concurrently with this matter the Court is adjudicating the Debtors' motion to extend the exclusivity period for filing a plan to August 26, 2019. Applying Civil Rule 23 will not impair the Debtors' ability to file and confirm a plan. Factor three weighs in favor of applying Civil Rule 23 to the claims administration process.

Debtors argue that class certification would adversely affect administration of the estate because it would be more expensive than the normal claims process. Debtors' argument misapprehends the focus of the third factor, which is directed toward whether class certification will impair the Debtors' ability to prosecute a plan.

4. Conclusion Regarding Application of the Musicland Factors

Having considered the *Musicland* factors, the Court finds that it is beneficial to apply Civil Rule 23 (made applicable by Bankruptcy Rule 7023) to the claims administration process. While it is true that the putative class was not certified prepetition (factor one), the second and third factors weigh in favor of applying Civil Rule 23. Of particular significance to the Court is that absent application of Civil Rule 23, former employees of the Debtors who lacked actual notice of the bar date would be prejudiced.

B. Civil Rule 23(a)

A party seeking class certification must first demonstrate that:

- 1) the class is so numerous that joinder of all members is impracticable,
- 2) there are questions of law or fact common to the class,
- 3) the claims or defenses of the representative parties are typical of the claims

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- or defenses of the class, and
- 4) the representative parties will fairly and adequately protect the interests of the class.

Civil Rule 23(a).

These requirements are generally referred to as “numerosity,” “commonality,” “typicality,” and “adequacy.”

With respect to the application of Civil Rule 23, the Supreme Court has held:

Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc. We recognized in *Falcon* that “sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question,” 457 U.S., at 160, 102 S.Ct. 2364, and that certification is proper only if “the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied,” *id.*, at 161, 102 S.Ct. 2364; see *id.*, at 160, 102 S.Ct. 2364 (“[A]ctual, not presumed, conformance with Rule 23(a) remains ... indispensable”). Frequently that “rigorous analysis” will entail some overlap with the merits of the plaintiff’s underlying claim. That cannot be helped. “[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Falcon, supra*, at 160, 102 S.Ct. 2364 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978); some internal quotation marks omitted). Nor is there anything unusual about that consequence: The necessity of touching aspects of the merits in order to resolve preliminary matters, *e.g.*, jurisdiction and venue, is a familiar feature of litigation. See *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676–677 (C.A.7 2001) (Easterbrook, J.).

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350–52, 131 S. Ct. 2541, 2551–52, 180 L. Ed. 2d 374 (2011).

At the outset, the Court rejects Wahidi’s contention that he has an absolute right to file a class proof of claim with respect to his claims under PAGA. The fact that Wahidi might be able to automatically obtain class certification for PAGA claims in

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State Court does not mean that Wahidi is entitled to such certification in federal court, where the requirements for class certification are different. *See Raphael v. Tesoro Ref. & Mktg. Co. LLC*, No. 2:15-CV-02862-ODW, 2015 WL 5680310, at *2 (C.D. Cal. Sept. 25, 2015) ("[T]here have been numerous rulings in [the Central District of California] holding that PAGA claims must comply with Rule 23 guidelines and failure to move for class certification will result in dismissal").

I. Commonality

Civil Rule 23(a)(2) requires a party seeking class certification to demonstrate that “there are questions of law or fact common to the class.” The Supreme Court has stated:

Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury. This does not mean merely that they have all suffered a violation of the same provision of law. Title VII, for example, can be violated in many ways—by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company. Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate-impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once. Their claims must depend upon a common contention—for example, the assertion of discriminatory bias on the part of the same supervisor. That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.

What matters to class certification ... is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.

Wal-Mart, 564 U.S. at 349–50 (internal citations and quotation marks omitted).

Movants have failed to prove that they have satisfied the commonality requirement. Movants allege that, as a matter of established and uniform company

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policy, the Debtors violated applicable California wage and hour laws by rounding down the recorded time of hourly employees, failing to provide meal and rest breaks, and failing to pay workers all wages due as a result of the rounding, meal, and rest break policies. Movants submit no evidence in support of their allegation that the Debtors applied uniform policies to all their employees.

To satisfy the commonality requirement, Movants must prove that “there was a common pattern and practice [of unlawful conduct] that could affect the class as a whole.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 (9th Cir. 2011). To make this showing, Movants should have submitted evidence showing the existence of uniform policies that inflicted similar injuries upon all members of the putative class. No such evidence is before the Court.

In fact, the current evidentiary record supports a finding that the Debtors lacked any set of uniform policies that violated applicable law. As set forth in the declaration of Steven C. Sharrer, VHS’ Chief Human Resources Officer (the “Sharrer Decl.”), meal and rest break policies varied by department. Sharrer Decl. at ¶ 22. Sharrer testifies that in In-Patient Units, meal and rest breaks are typically assigned, with the first rest break typically being scheduled within two hours of the start of the shift, the first meal break occurring before the fifth hour of the shift, and the last rest break occurring before the seventh hour. Sharrer Decl. at ¶ 22. Sharrer states that in the Emergency Department, meal and rest breaks start when the break nurse arrives at 11:00 a.m., and are assigned by the charge nurse based upon availability. *Id.* According to Sharrer, in the Gero-Psych Unit, employees choose the assignment they want and pre-assigned meal or rest break times are written on the assignment sheet. *Id.*

As the parties seeking class certification, Movants have the burden of furnishing sufficient evidence showing that the commonality requirement has been satisfied. LBR 9013-1(i) requires that “[f]actual contentions involved in any motion ... must be presented, heard, and determined upon declarations and other written evidence.”

Movants contend that due process requires that they be afforded the opportunity to take formal discovery in support of their attempts to show that the Rule 23 requirements of numerosity, commonality, typicality, and adequacy have been satisfied. Movants’ argument incorrectly presupposes that they have been denied the opportunity to take discovery. The Debtors sought bankruptcy protection on August 31, 2018. At any time after this date, Movants could have sought information from the Debtors in support of their class proof of claim under Bankruptcy Rule 2004. An examination under Rule 2004 may relate “to the acts, conduct, or property or to the

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liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate ..." In Chapter 11 cases, the examination "may also relate to ... any ... matter relevant to the case or to the formulation of a plan." "The scope of a Rule 2004 examination is exceptionally broad," and Rule 2004 examinations "have been compared to a 'fishing expedition.'" *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999). Rule 2004 contains a mechanism for compelling the production of documents. *See* Bankruptcy Rule 2004(c).

In *In re Associated Cmty. Servs., Inc.*, the court declined to allow a claimant an additional opportunity to conduct discovery in support of a class certification motion. *Associated Cmty. Servs.*, 520 B.R. 650, 655–56 (Bankr. E.D. Mich. 2014). The court reasoned that the claimant could have conducted the necessary discovery under Bankruptcy Rule 2004:

If Pepper [the claimant] needed to conduct discovery before filing a motion to apply Rule 7023, he had ample time to do so under Fed. R. Bankr. P. 2004. Rule 2004 examinations are routinely granted, and are one of the few instances where the Federal Rules of Civil Procedure permit discovery to be taken before filing a motion or commencing an action. Pepper offers no explanation as to why he has not taken a Rule 2004 examination or sought any other discovery to date that could assist him in assembling whatever facts he believes are necessary before filing a motion to apply Rule 7023.

In re Associated Cmty. Servs., Inc., 520 B.R. 650, 655–56 (Bankr. E.D. Mich. 2014).

Notwithstanding Movants' failure to marshal the appropriate evidence in support of the Motion, the Court is willing to consider Movants' request for additional time in which to conduct discovery. It is important to emphasize that because Movants could have conducted the necessary discovery under Rule 2004 prior to filing the Motion, there is no presumption that Movants are automatically entitled to a further opportunity to conduct discovery. At the hearing, Movants must present an offer of proof as to what facts the proposed discovery will yield, and should be prepared to address the Court's concerns (further explained below) regarding Movants' ability to satisfy Civil Rule 23's commonality and typicality prongs.

In determining whether to afford Movants a further opportunity to conduct discovery, the Court is guided by several principles. First, the Court is obligated to construe and apply the Bankruptcy Rules, including the rules governing discovery, in a manner that secures "the just, speedy, and inexpensive determination" of the

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proceedings before it. *See* Bankruptcy Rule 1001. Second, in determining the appropriate scope of discovery, the Court must consider “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Civil Rule 26(b)(1).

With respect to the commonality prong, the evidence before the Court shows that the Debtors operated a complex network of healthcare entities consisting of many different types of employees, including full-time employees, part-time employees, union-represented employees, non-union represented employees, exempt employees, and non-exempt employees. Sharrer Decl. at ¶ 6. The Debtors’ policies with respect to rounding and meal and rest breaks varied not only between the various hospitals but also between different departments in the same hospital. *Id.* at ¶ 21. Given the extensive variation in both the types of employees and the Debtors’ policies, Movants should be prepared to address what facts they anticipate eliciting through discovery that will show that a classwide proceeding is capable of generating common answers that can drive resolution of the litigation. The Supreme Court has held that “[d]issimilarities within the proposed class are what have the potential to impede the generation of common answers.” *Wal-Mart*, 564 U.S. at 349–50. The evidence before the Court indicates a high degree of dissimilarity among the members of the proposed class.

2. Typicality

The Ninth Circuit has explained the typicality standard as follows:

To demonstrate typicality, Plaintiffs must show that the named parties’ claims are typical of the class. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.

Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (internal citations and quotation marks omitted).

The evidence before the Court shows that the claims of Wahidi and Madrigal are

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not typical of those of the proposed class because Wahidi and Madrigal were not injured by the challenged policies. With respect to rounding, the evidence shows that Wahidi was paid in accordance with the rounding policies negotiated by the CNA. Shaffer Decl. at ¶ 13. With respect to meal and rest breaks, the evidence shows that Wahidi was paid \$1,932.52 on account of missed breaks and that Madrigal was paid \$294.60 on account of missed breaks. *Id.* at ¶¶ 34–35. Neither of the unions representing Wahidi or Madrigal pursued grievances over their final pay. *Id.* at ¶¶ 32–33.

In the Court’s view, the fact that Wahidi and Madrigal were not injured by the challenged policies is fatal to their ability to satisfy the typicality prong. Information produced from discovery regarding the effects of the policies upon other employees cannot change the fact that Wahidi and Madrigal appear to be uniquely unsuitable as class representatives. Movants should be prepared to address this issue.

3. Adequacy

“Class representation is inadequate if the named plaintiff fails to prosecute the action vigorously on behalf of the entire class or has an insurmountable conflict of interest with other class members.” *Hesse v. Sprint Corp.*, 598 F.3d 581, 589 (9th Cir. 2010).

Here, the question of adequacy turns on Movants’ ability to satisfy the commonality and typicality prongs. For example, Movants will not be able to vigorously prosecute the action if their claims are not typical because they were not injured by the Debtors’ policies. As set forth above, it appears unlikely to the Court that Movants will be able to satisfy these prongs, even if afforded the opportunity to take additional discovery. However, in the event that Movants can establish commonality and typicality, there is nothing in the present record indicating that Movants would not adequately protect the interests of the class as a whole.

4. Numerosity

Similar to the adequacy prong, this prong also depends upon Movants’ ability to satisfy the commonality and typicality prongs. The proposed class of approximately 7,300 claimants is large enough such that joinder of each class member would be impracticable. But the proposed class of 7,300 is tenable only if Movants can also establish that the Debtors applied common policies as to all 7,300 employees and that those employees sustained injuries similar to those of Movants.

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C. Civil Rule 23(b)

If the numerosity, commonality, typicality, and adequacy prongs imposed by Civil Rule 23(a) are satisfied, a class may be maintained only if one of the requirements set forth in Civil Rule 23(b) is also satisfied. Here, Movants assert that the class may be maintained pursuant to either Civil Rule 23(b)(1)(B) or Civil Rule 23(b)(3).

Under Civil Rule 23(b)(1)(B), a class may be maintained if “prosecuting separate actions by or against individual class members would create a risk of ... adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.”

Movants have not satisfied Civil Rule 23(b)(1)(B). Permitting employees to seek redress by filing individual proofs of claim creates no risk of inconsistent decisions that would impair the ability of individual employees to protect their interests. First, all proofs of claim will be adjudicated by this Court, so there is no risk of different courts issuing inconsistent decisions. Second, the evidence presently before the Court shows that the employees were subject to varied policies regarding the rounding, meal, and rest break claims that are issue. As a result of this variation, employees filing individual proofs of claim will not not be prejudiced by decisions rendered with respect to other proofs of claim involving different facts.

Civil Rule 23(b)(3) provides that a class may be maintained if:

[T]he court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Civil Rule 23(b)(3).

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are

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sufficiently cohesive to warrant adjudication by representation.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249, 138 L. Ed. 2d 689 (1997). “Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir.), *opinion amended on denial of reh'g*, 273 F.3d 1266 (9th Cir. 2001). A class action is superior to other methods of litigation if “classwide litigation of common issues will reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

The Court’s concerns regarding Movants’ ability to satisfy the commonality and typicality prongs also cause the Court to doubt Movants’ ability to satisfy the predominance and superiority tests. As discussed above, the fact that the Debtors’ rounding, meal, and rest break policies varied not only between hospitals but also within departments in the same hospital suggests that common questions of law or fact would *not* predominate over individual questions. This variation further suggests that a class action would not be superior to individualized proofs of claim, as each proof of claim would assert its own unique set of facts. Movants should be prepared to explain how the information they anticipate obtaining through discovery will address the Court’s concerns.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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- #5.00** Hearing
RE: [2025] Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for
Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly
Situated
- fr. 4-24-19
- fr. 5-8-19

Docket 2025

Tentative Ruling:

5/20/2019

The Motion is DENIED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated [Doc. No. 2025] (the "Motion")
- 2) Debtors' Opposition to Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated and Declarations of Pascale-Sonia Roy and Andres Estrada in Support Thereof [Doc. No. 2259] (the "Opposition")
- 3) Reply in Support of Motion of Iris Lara, Tanya Llera, and Jarmaine Johns for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated [Doc. No. 2356] (the "Reply")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("Verity") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the

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Debtors' Chapter 11 cases. Doc. No. 17.

Iris Lara, Tanya Llera, and Jarmaine Johns (collectively, the "Movants") seek authorization to file a class prepetition unsecured proof of claim on behalf of similarly situated creditors. Movants were prepetition employees of VHS. The Debtors oppose the Motion.

A. The Prepetition State Court Complaint

On May 12, 2017, Iris Lara and Tanya Llera, individually and on behalf of all other employees similarly situated, filed a complaint against Verity in the Los Angeles Superior Court, alleging negligence, breach of implied contract, violation of the California Customer Records Act, and violation of § 17200 *et seq.* of the California Business & Professions Code.

On May 19, 2017, Jarmaine Johns, individually and on behalf of all other employees similarly situated, file a complaint against VHS in the San Mateo Superior Court, alleging violation of the California Confidentiality of Medical Information Act, invasion of privacy, breach of contract, negligence, and breach of implied contract. The two actions were consolidated and a consolidated complaint was filed on June 21, 2018 (the "Complaint") in the Los Angeles Superior Court (the "State Court").

The material allegations of the Complaint are as follows:

- 1) On April 27, 2016, Verity was targeted in a "phishing" scam, in which cybercriminals contacted Verity's human resources department requesting employee W-2 files.
- 2) Verity responded by sending the requested information, which included the names, addresses, and full Social Security numbers of thousands of current and former employees, as well as the personally identifiable information ("PII") of beneficiaries designated by those employees for certain of their employment benefits.
- 3) The cybercriminals were able to perpetrate this breach because Verity failed to maintain reasonable and adequate security measures to protect the employees' information from access and disclosure, and failed to properly train employees with access to PII.
- 4) As a result of Verity's substandard cybersecurity protocols, the breach was not discovered until May 22, 2016, nearly four weeks after the employee PII was released. Written notification to those affected was not sent until June 1, 2016, more than a month after the breach.

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- 5) As a result of Verity's failure to maintain adequate security measures and timely notify employees of security breaches, Verity's employees have suffered an ascertainable loss in that they have had tax refunds withheld or otherwise delayed, and have been required to (a) engage professional tax, legal, or other professional assistance and (b) undertake additional security measures to minimize the risk of future data breaches at their own expense.

Based upon the foregoing allegations, the Complaint asserts claims for invasion of privacy, negligence, unjust enrichment, breach of implied contract, violation of the California Customer Records Act, violation of the Confidentiality of Medical Information Act, and violation of the Unfair Competition Law. The proposed class consists of "[a]ll current and former employees of Verity, and their spouses and dependents, whose Personally Identifiable Information was in the possession and control of Verity at any time from January 2015 to the present and was compromised by the Data Breach [of April 27, 2016]." Complaint at ¶ 54. The State Court did not certify the proposed class prior to the Petition Date.

B. Undisputed Facts Regarding the Data Breach

Verity does not dispute certain of Movants' allegations regarding the data breach. Specifically, Verity admits the following with respect to the data breach:

On April 27, 2016, Verity was targeted with an e-mail "phishing" scam. In response to an individual impersonating a Verity executive, a Verity employee sent files containing W-2 information for employees employed between January 1, 2015 and December 31, 2015 to a third party criminal. The information sent included names, addresses, Social Security numbers, earnings, and withholding information for employees who were issued a W-2 for the 2015 tax year.

On May 22, 2016, Verity's senior leadership discovered that the breach had occurred. On May 23, 2016, Mitch Creem, then the Chief Executive Officer of Verity, sent a memorandum to all employees and physicians alerting them to the breach and advising that Verity would provide a formal notification letter, identity protection systems, and a hotline for questions. On May 26, 2016, Mr. Creem sent an updated memorandum to employees, advising them that Verity had contracted with Epiq, a national firm, to notify affected individuals and to provide identity protection services and advice. On June 1, 2016, Epiq mailed a formal notice of the data breach to affected employees. Verity offered every employee two years of free identity protection services through Equifax.

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C. Summary of the Motion

Movants make the following arguments and representations in support of the Motion:

The factors supporting application of Bankruptcy Rule 7023 to the claims administration process are satisfied here. First, a class proof of claim will benefit the claims administration process. The proposed class consists of approximately 7,300 claimants. Collective resolution through a class proof of claim will be more efficient. Many of the claims are relatively small, making them economically infeasible for claimants to prosecute. Second, the Debtors provided notice of the claims bar date (the "Bar Date") to employees that were employed as of the Petition Date, but did not provide notice of the Bar Date to former employees. Absent class certification, employees who did not receive notice of the Bar Date will be unable to vindicate their rights. Third, permitting a class proof of claim will not adversely affect the administration of the estate. The Debtors have been aware of the class claim since May 2016, listed the class claim in their list of 50 largest unsecured creditors, and have not yet confirmed a plan of reorganization.

The elements of numerosity, commonality, typicality, and adequacy set forth in Civil Rule 23(a) are satisfied. With respect to numerosity, joinder of approximately 7,300 current and former employees would be impractical. With respect to commonality, the claims are based on a data breach that affected all employees. Courts have recognized that data breach claims are amenable to class treatment. *See Ree v. Zappos.com, Inc. (In re Zappos.com, Inc.)*, 888 F.3d 1020 (9th Cir. 2018).

Typicality is satisfied because class members "have the same or similar injury" and "have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Movants and members of the proposed class have been injured in the same manner in that their personal data was not secured by Verity and as a result was taken by cybercriminals.

Adequacy is satisfied because Movants will fairly and adequately protect the interests of the class. Movants have no interests that diverge from those of the class and have been injured in the same manner as other class members. The same strategies that will vindicate Movants' claims will vindicate the claims of the class.

Civil Rule 23(b)(1)(B) is satisfied. Rule 23(b)(1)(B) provides that a class action may be maintained if prosecuting separate actions by individual class members would create a risk of "adjudications with respect to individual class members that, as a

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practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." Courts have found that Rule 23(b)(1)(B) is satisfied in "limited fund" cases—that is, "an action in which any recovery will come from a fixed pool of assets that is or may be insufficient to satisfy all claims against the fund." 5 Moore's Federal Practice—Civil § 23.42[2][a] (2019). This proceeding qualifies as a limited fund case because the Debtors intend to liquidate all their assets.

In the alternative, Civil Rule 23(b)(3) is satisfied because common questions of law or fact predominate over any individual questions and a class action is the superior method to adjudicate the action fairly and efficiently. The common questions applicable to this case include whether Verity owed a duty to Movants and the class members to protect their private information, whether Verity's security measures were adequate, whether Verity failed in its duty to protect this private information, and whether Verity's notice to Movants and the class members of the breach was timely and sufficient.

A class action is superior because it is not economically feasible for most claimants to individually prosecute their claims. In addition, former employees were not notified of the bar date. Absent a class proof of claim, those former employees may never know that they were required to file an individual proof of claim in order to recover from the estate.

Superiority is further supported by the fact that damages can be determined on a class-wide basis. Damages are anticipated to fall into two categories: (1) proof of monetary loss as a result of use of the breached private data; and (2) costs associated with ongoing creditor monitoring to prevent use of the breached private data. This information can efficiently be presented to the Court through expert testimony.

If the Court does not permit a class proof of claim, the Court should (1) extend the bar date for members of the class to file individual claims and (2) establish a practical process for collectively adjudicating the claims. The process should be similarly to that used in *In re Buffets LLC's*, No. 16-50557-RBK (Bankr. W.D. Tex.). In *Buffets*, a notice and consent form was mailed to all putative class members to participate in the bankruptcy proceedings. All consent forms had to be filed within 30 days. The procedures elicited over 1,600 unpaid wage claims.

D. Summary of Verity's Opposition

Verity makes the following arguments and representations in its Opposition to the Motion:

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The Court should not apply Civil Rule 23 to the claims administration process. First, the class was not certified prepetition despite adequate time to do so. Second, although Debtors did not provide actual notice of the bar date to all former employees affected by the data breach, such employees received constructive notice of the bar date. Notice of the bar date was published in the *Los Angeles Times*, *San Francisco Chronicle*, *San Jose Mercury News*, and *USA Today*. Notice of the bar date was also posted on the website of the Debtors' claims and balloting agent.

Third, class certification would be more costly and burdensome than normal bankruptcy processes. Verity has reason to believe that only a few proposed class members would have valid claims, and such claims can be resolved through the normal bankruptcy process of individual claims. Fewer than 30 employees ever complained to Verity of injury from the data breach. Verity proposes that its Chapter 11 Plan will provide relief to affected former and current employees by including an offer for an additional two years of identity protection services. This would provide relief not easily recoverable through class treatment.

Class certification should be denied because the claims set forth in the Complaint are without merit. Movants' negligence claim fails because damages for negligence cannot be recovered absent actual injury. "Plaintiffs asserting negligence claims ordinarily may not recover purely economic damages unconnected to physical injury or property damage." *Castillo v. Seagate Tech., LLC*, No. 16-CV-01958-RS, 2016 WL 9280242, at *2 (N.D. Cal. Sept. 14, 2016). Movants cannot recover damages for the projected future costs of ongoing credit monitoring. *See Castillo*, 2016 WL 9280242, at *4 (holding that "those who claim only that they may incur expenses in the future have not" pleaded a cognizable injury).

Movants' claim for implied breach of contract fails because for such a claim, "[n]ominal damages, speculative harm, or threat of future harm do not suffice to show legally cognizable injury." *Low v. LinkedIn Corp.*, 900 F.Supp.2d 1010, 1028 (N.D. Cal. 2012). Movants allege a great variety of speculative out-of-pocket damages that they indisputably did not experience.

Movants' claim under the Customer Records Act fails because the statute does not apply to "[a] provider of health care, [a] health care service plan, or [a] contractor regulated by the Confidentiality of Medical Information Act." Cal. Civ. Code § 1798.81.5(e). Movants admit in the Complaint that Verity is a provider of health care. Complaint at ¶¶ 6 and 27.

Movants' claim for damages under the Confidentiality of Medical Information Act

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(the "CMIA") fails because the statute applies only to "medical information." Cal. Civ. Code § 56 *et seq.* Under the statutory definitions, the personal information of employees does not qualify.

Movants' claim under the Unfair Competition Law fails because "reliance on the threat of future harm does not satisfy the UCL's 'lost money or property' standing requirement." *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 313 F. Supp. 3d 1113, 1130 (N.D. Cal. 2018).

Movants' claim for invasion of privacy fails because such a claim requires an intentional intrusion into private matters. *See Hernandez v. Hillside, Inc.*, 47 Cal. 4th, 272, 286 (2009). Here, the Movants' personal information was inadvertently disclosed, not intentionally disclosed.

Movants' claim for unjust enrichment fails because by providing their personal information, class members conferred nothing of value on Verity. "The doctrine (of unjust enrichment) applies where plaintiffs, while having no enforceable contract, nonetheless have conferred a benefit on defendant which defendant has knowingly accepted under circumstances that make it inequitable for the defendant to retain the benefit without paying for its value." *Hernandez v. Lopez*, 180 Cal. App. 4th 932, 938, 103 Cal. Rptr. 3d 376 (2009).

Movants cannot satisfy Civil Rule 23's commonality requirement. Movants contend that commonality is satisfied because Verity allegedly had deficient policies with respect to safeguarding employee personal information. However, Movants have failed to demonstrate, as opposed to allege, the existence of such a deficient policy.

Movants cannot satisfy the typicality requirement. Movants have failed to establish that their claims are typical of other class members. Movants do not provide any showing regarding the nature of other employees' injuries. Verity's preliminary investigation shows that Movants' claims are not typical. The three Movants allegedly experienced fraudulent tax returns involving out-of-pocket costs. Verity knows of only a small group of employees (less than 30 or approximately 0.4% of the proposed class) who experienced similar issues. The vast majority of affected employees (approximately 80%) never complained of any harm and did not even sign up for the free identity protection despite Verity's urging.

Movants do not satisfy the adequacy requirement. First, Llera is a former employee and should not be a class representative on behalf of current employees. Second, Movants have a conflict of interest because the injuries they suffered (being subjected to fraudulent tax filings) were more severe than the injuries suffered by most members of the proposed class. Movants would not be adequately incentivized

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to pursue relief that would benefit most members of the proposed class.

Movants' attempt to certify a class under Civil Rule 23(b)(1) fails. There is no danger of inconsistent or varying adjudications because the low value of the individualized claims means that the risk of multiple separate lawsuits is low.

Movants' request for certification under Civil Rule 23(b)(3) fails. Common issues do not predominate over individualized issues. There are many individualized issues regarding causation and the fact of injury, such as whether class members suffered any cognizable harm and whether that harm was caused by Verity's disclosure, or instead resulted from a different data breach.

E. Summary of Movant's Reply

Movants make the following arguments and representations in their Reply to Verity's Opposition:

The Debtors' objection is substantively a premature summary judgment motion on the merits of the underlying claims. As the merits of the underlying claims are not at issue in connection with the Motion, Movants will not take the bait. The only issue before the Court is whether it makes sense for a class representative to be appointed to have standing to resolve the bankruptcy claims which arise from the violations of law alleged in the Complaint.

There is no dispute that the Debtors served notice of the bar date only upon employees who remained employed as of the Petition Date, and did not provide notice to former employees. The fact that former employees did not receive notice is a compelling reason for class treatment of the claim. Permitting a class claim will not adversely affect the administration of the estate because the Debtors have not yet filed a plan. There is no merit to the Debtors' contention that the proposed class members will be protected by a plan provision giving class members a further two years of identity protection services. Such unilateral treatment is not preferable to good-faith negotiations with a class representative.

The Court should reject the Debtors' attempt to turn the Motion into a hearing on the merits of the underlying claims. Nonetheless, Movants' claims have merit. There is no merit to the Debtors' contention that Movants' claims for damages are not cognizable because they are speculative and/or non-monetary. Where PII is exposed during a data breach, an injury-in-fact is established where the misuse of such PII is alleged to be imminent. *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010); *In re Adobe Systems, Inc. Priv. Litig.*, 66 F.Supp.3d 1197, 1215 (N.D. Cal.

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2014). The increased, immediate risk that the class members' data will be misused, as clearly demonstrated by the fact the Movants were victimized by having their information used to file fraudulent tax returns, establishes imminent injury and satisfies the pleading standard. *Id.*; *In re Yahoo!*, 2017 WL 3727318 *12. Additionally, the necessity to mitigate damages by ongoing credit monitoring to guard against future theft is also recognized as a cognizable injury for purposes of negligence. *Krottner*, 628 F.3d at 1141-42; *In re Yahoo!*, 2017 WL 3727318 *16 (finding expenses paid for credit monitoring is sufficient to demonstrate an injury in fact).

Movants have sufficiently pleaded a claim under the California Customer Recording Act (the "CRA"). The CRA requires that any business that "owns, licenses, or maintains personal information about a California resident ... implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure." By failing to implement reasonable security measures appropriate to the nature of the personal information of its current and former employees, the Debtors violated the CRA.

Movants have sufficiently alleged a claim under the Confidentiality of Medical Information Act (the "CMIA"). The Debtors assert that the PII disclosed does not fall within the scope of the CMIA. Whether the PII is covered under the CMIA requires a factual finding which is not properly determined in the context of a motion for class certification.

Movants have sufficiently alleged a claim under the Unfair Competition Law (the "UCL"). Debtors argue that Movants do not have standing under the UCL because they have not pleaded any cognizable injury. Debtors ignore that Movants and the proposed class members have been injured from the filing of fraudulent tax returns and the continued improper use of their identities.

Movants have sufficiently alleged a claim for invasion of privacy. The elements of a claim for invasion of privacy are as follows: "(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." *Pettus v. Cole*, 49 Cal.App.4th 402, 439 (1996). Contrary to Debtors' contention, Movants are not required to allege an "intentional intrusion."

Movants have sufficiently alleged a claim for unjust enrichment. Under California law, unjust enrichment claims can exist as a separate cause of action when "the claim is grounded in equitable principles of restitution." *Hirsch v. Bank of Am.*, 107

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Cal.App.4th 708, 721-22 (2003). Restitution is permitted under the UCL. *Bank of the West v. Superior Court*, 2 Cal.4th 1254 (1992). Given that the Movants have stated a valid cause of action under the UCL, the Debtors' arguments regarding the Class Claimants' unjust enrichment claims should be rejected. Furthermore, the cases the Debtors rely upon to support their argument are inapposite, as they did not involve employee-employer relationships in the context of data breaches.

Movants have satisfied Civil Rule 23's commonality requirement. Movants have alleged that they suffered the same injury—their PII was released by the Debtors in April 2016. "[O]ne type of injury allegedly inflicted by one actor in violation of one legal norm" satisfies the commonality requirement. *Vaquero v. Ashley Furn. Indus., Inc.*, 824 F.3d 1150, 1154 (9th Cir. 2016). The extent and adequacy of the Debtors' security measures are at the heart of all of the claims. *In re Anthem, Inc. Data Breach Litig. ("Anthem II")*, 327 F.R.D. 299, 308 (N.D. Cal. Aug. 15, 2008). The answer does not vary among class members, making this a common issue which will drive the resolution. *Id.*

Movants have satisfied the typicality requirement. The Debtors argue that Movants' claims are not typical of the class because Movants do not provide any showing regarding the nature of their or other employees' injuries. The argument is misdirected, because the focus on typicality is not on the "injury suffered" but on whether the class is victimized and harmed by the same event as the representative plaintiffs. *Brown v. DirecTV*, 2019 WL 1434669 *3 (C.D. Cal. Mar. 29 2019). The focus is not on the injury, but on the conduct of the defendant. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

II. Findings and Conclusions

Class certification is governed by Civil Rule 23. Bankruptcy Rule 7023 provides that Civil Rule 23 "applies in adversary proceedings." Under Bankruptcy Rule 9014(c), the Court has discretion to apply Bankruptcy Rule 7023 to the claims administration process. Courts have developed a three-factor framework to guide the exercise of this discretion:

- 1) whether the class was certified pre-petition;
- 2) whether the members of the putative class received notice of the bar date; and
- 3) whether class certification will adversely affect the administration of the estate.

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In re Chaparral Energy, Inc., 571 B.R. 642, 646 (Bankr. D. Del. 2017).

These factors were first articulated in *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) and are commonly referred to as the “*Musicland* factors.” “No one factor is dispositive; a factor may take on more or less importance in any given case.” *Chaparral Energy*, 571 B.R. at 646.

Only if the Court determines that it is appropriate to apply Bankruptcy Rule 7023 to the claims administration process does the Court proceed to determine whether the requirements of Civil Rule 23 have been satisfied. As explained by the *Chaparral Energy* court:

Whether to permit a class action proof of claim is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, the court must decide whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Second, the court must determine whether the requirements of Federal Rule 23 have been satisfied, such that a class proof of claim may properly be filed.

Id. (internal citations omitted); *see also Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012) (“Civil Rule 23 factors do not become an issue until the bankruptcy court determines that Rule 7023 applies by granting a Rule 9014 motion. The issue on such a motion centers more directly on whether the benefits of applying Rule 7023 (and Civil Rule 23) are superior to the benefits of the standard bankruptcy claims procedures.”).

Careful consideration of the *Musicland* factors is necessary because “class certification may be ‘less desirable in bankruptcy than in ordinary civil litigation.’” *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005). Consequently, “[e]ven class actions that were certified prior to the filing for bankruptcy may ... be disallowed.” *Id.*

In *In re First Alliance Mortgage Co.*, the District Court for the Central District of California stated that “class action devices ... are particularly appropriate” in bankruptcy proceedings, and that “the party opposing the use of class devices [bears] the burden.” *First All. Mortg. Co.*, 269 B.R. 428, 445 (C.D. Cal. 2001). In the eighteen years since it was published, no decision—either published or unpublished—has cited *First Alliance* for this proposition. [Note 1] More recent decisions within the Ninth Circuit have approached class proofs of claim in a manner inconsistent with the standard set forth in *First Alliance*.

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For example, in *In re Aughney*, the court expunged a class proof of claim, reasoning that the “essential problem with a class proof of claim is that class action procedures often conflict with established bankruptcy procedures.” *Aughney*, No. 10-12666, 2011 WL 479010, at *1 (Bankr. N.D. Cal. Feb. 4, 2011). The court held that “class claims can be allowed, especially where a class was certified before bankruptcy or principles of equity and simple justice militate in favor of a claim being pursued on behalf of a class,” but emphasized that a “prerequisite for allowance ... is that the proponent must seek and obtain a determination of the Bankruptcy Court that Rule 7023 of the Federal Rules of Bankruptcy Procedure be made applicable to the claims process.” *Id.* In *Westfall v. MII Liquidation Inc.*, the District Court upheld the Bankruptcy Court’s denial of class certification, explaining that “bankruptcy courts have broad discretion to allow or disallow such class claims.” *Westfall*, No. 06-CV-02343-BENNLIS, 2007 WL 2700951, at *4 (S.D. Cal. Sept. 11, 2007).

Courts outside the Ninth Circuit have also declined to follow *First Alliance*. Instead of placing the burden upon the party opposing class certification, the Fourth Circuit Court of Appeals held that it was appropriate for the Bankruptcy Court to weigh “the benefits and costs of class litigation against the efficiencies created by the bankruptcy claims resolution process.” *Gentry v. Siegel*, 668 F.3d 83, 92 (4th Cir. 2012). The Fourth Circuit found that “[e]ach bankruptcy case must be assessed on a case-by-case basis to determine whether allowing a class action to proceed would be superior to using the bankruptcy claims process.” *Gentry*, 668 F.3d at 93. *First Alliance*’s burden standard is also fundamentally inconsistent with the *Musicland* factors, which have been widely adopted.

The Court declines to follow *First Alliance* for the propositions that class actions are particularly appropriate in bankruptcy and that the party opposing a class proof of claim bears the burden of proof. In determining whether application of Civil Rule 23 to the claims administration process is warranted, the Court will apply the *Musicland* factors, keeping in mind that “[w]hether to permit a class action proof of claim is a matter of discretion.” *Chapparal Energy*, 571 B.R. at 646.

A. The *Musicland* Factors Do Not Support Applying Civil Rule 23 to the Claims Administration Process

As set forth below, the Court finds that the *Musicland* factors weigh against applying Civil Rule 23 to the claims administration process.

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1. Factor One: Whether the Class was Certified Prepetition

The putative class was not certified prepetition, so the first *Musiland* factor weighs against applying Civil Rule 23 to the claims administration process.

2. Factor Two: Whether Putative Class Members Received Notice of the Bar Date

Where putative class members have received actual notice of the bar date, the second factor weighs against applying Civil Rule 23 to the claims administration process. *Musiland*, 362 B.R. at 655. The reason is that such putative class members have an opportunity to share in the distribution from the debtors' estate by filing a proof of claim. *Id.* By contrast, putative class members who did not receive actual notice of the bar date lack the ability to file a proof of claim. The filing of a class proof of claim vindicates the ability of such putative class members to assert a claim against the estate.

Here, the proposed class consists of “[a]ll current and former employees of Verity, and their spouses and dependents, whose Personally Identifiable Information was in the possession and control of Verity at any time from January 2015 to the present and was compromised by the Data Breach [of April 27, 2016].” Complaint at ¶ 54. The Debtors provided actual notice of the bar date to employees that were employed as of the Petition Date but not to former employees.

That not all employees received actual notice of the bar date does not compel the Court to apply Civil Rule 23 to the claims administration process. As discussed below with respect to Factor Three, the Court finds that class certification will adversely affect the administration of the estate. To vindicate the ability of class members to receive a distribution from the estate, the Court will extend the claims bar date to **September 30, 2019**; the extension shall apply only to members of the putative class and not to other creditors. *See In re Connaught Grp., Ltd.*, 491 B.R. 88, 97 (Bankr. S.D.N.Y. 2013) (holding that where a court denies a class certification motion, “it should set a reasonable bar date to allow the members of the putative class to file individual claims”). The Court will order the Debtors to publish notice of the extension of the bar date as to putative class members in the *San Francisco Chronicle*, *USA Today*, the *San Jose Mercury News*, and the *Los Angeles Times*. [Note 2] The notice shall be published by no later than **July 8, 2019** and a proposed form of notice shall be filed and lodged with the Court no later than **June 21, 2019**. Any party in interest may file an opposition to the proposed notice by no later than **July 1, 2019**. If an opposition is filed the Court will determine if a hearing is required and will set a date. Debtors shall also publish notice of the extension on

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the website of their claims and balloting agent, Kurtzman Carson Consultants, LLC. Both the published and website notices must clearly state that extended bar date applies only to all current and former employees of Verity, and their spouses and dependents, whose Personally Identifiable Information was in the possession and control of Verity at any time from January 2015 to the present and was compromised by the Data Breach of April 27, 2016.

3. Factor Three: Whether Class Certification Will Adversely Affect the Administration of the Estate

The Court finds that class certification will adversely affect the administration of the estate. A class proof of claim will prove more unwieldy and be less efficient than individual proofs of claim.

The Debtors have demonstrated that significant variation exists in the types of injuries suffered by members of the proposed class. Only approximately thirty employees (or 0.4% of the proposed class) experienced practical issues resulting from the data breach. Declaration of Pascale Sonia-Roy (the "Sonia-Roy Decl.") at ¶ 21. Of these thirty employees experiencing issues, certain employees reported being victims of fraudulent tax return filings. *Id.* One employee reported the unauthorized use of a credit card. *Id.* One employee reported a fraudulent request for a second credit card. *Id.* One employee reported an attempted by a third-party to refinance a mortgage and draw on equity. *Id.* One employee reported a fraudulent request for a mortgage payment refund. None of these attempts to defraud the employees were successful. *Id.* All employees ultimately received their tax returns and suffered no direct damages. *Id.* at ¶ 22.

The Debtors received only two claims for reimbursement of out-of-pocket expenses: (1) a request by six nurses employed at St. Francis Medical Center for compensation for time and mileage to meet in-person with the Internal Revenue Service; and (2) a \$30 dollar reimbursement request by another employee for the purchase of additional identity theft protection. *Id.* at ¶ 23.

In sum, only a very small percentage of the putative class has suffered any damages on account of the data breach. Of those employees who were injured, the out-of-pocket costs incurred vary significantly. The most effective way to address the claims of employees who have suffered damages is to allow such employees the opportunity to file proofs of claim. In contrast to a class proof of claim, individualized proofs of claim will be precisely tailored to the damages suffered by each claimant.

Movants assert that classwide litigation as to damages can be effectively managed

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through expert testimony that will estimate damages. Such expert testimony would be expensive, time-consuming, and inevitably less precise than individualized proofs of claim. There is no point in engaging in such an exercise where a process already exists that can effectively address any claims asserted by employees.

As explained by the court in *Gentry v. Siegel*, the normal bankruptcy claims process allows all claims to be consolidated in one forum and permits claimants to file proofs of claim without counsel at virtually no cost to themselves. *Gentry*, 668 F.3d at 93. In contrast to these systemic advantages, classwide litigation is frequently expensive, time-consuming, and protracted. *Id.* The normal policy concerns that typically fail a class action process—the risk of inconsistent adjudications and the deterrence of improper defendant behavior—are not a concern in a bankruptcy proceeding involving a single court. *Id.*

The court in *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 9 (S.D.N.Y. 2005) reached a similar conclusion:

[The] superiority of the class action vanishes when the "other available method" is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost. In efficiency, bankruptcy is superior to a class action because in practice small claims are often "deemed allowed" under § 502(a) for want of objection, in which case discovery and fact-finding are avoided altogether. As for fairness, although the notice requirements of Rule 23 are superior for class members to the usual bankruptcy notice by publication, this shortcoming is easily remedied by a bankruptcy notice directed specifically at class members, either at the time of the original notice or thereafter by order extending the bar date for class members.

In re Ephedra Prod. Liab. Litig., 329 B.R. 1, 9 (S.D.N.Y. 2005).

For these reasons, the *Musicland* factors weigh against applying Civil Rule 23 to the claims administration process. Accordingly, the Court declines to apply Civil Rule 23 and declines to authorize Movants to proceed with the proposed class proof of claim. Because the Court will not apply Civil Rule 23, it is not necessary for the Court to address whether Movants have met the class certification requirements of numerosity, commonality, typicality, and adequacy.

B. Movants Are Not Entitled to a Further Opportunity to Conduct Discovery in

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Support of the Class Certification Motion

Movants contend that due process requires that they be afforded the opportunity to take formal discovery in support of the Motion. Movants' argument incorrectly presupposes that they have been denied the opportunity to take discovery. The Debtors sought bankruptcy protection on August 31, 2018. At any time after this date, Movants could have sought information from the Debtors in support of their class proof of claim under Bankruptcy Rule 2004. An examination under Rule 2004 may relate "to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate" In Chapter 11 cases, the examination "may also relate to ... any ... matter relevant to the case or to the formulation of a plan." "The scope of a Rule 2004 examination is exceptionally broad," and Rule 2004 examinations "have been compared to a 'fishing expedition.'" *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999). Rule 2004 contains a mechanism for compelling the production of documents. *See* Bankruptcy Rule 2004(c).

In *In re Associated Cmty. Servs., Inc.*, the court declined to allow a claimant an additional opportunity to conduct discovery in support of a class certification motion. *Associated Cmty. Servs.*, 520 B.R. 650, 655–56 (Bankr. E.D. Mich. 2014). The court reasoned that the claimant could have conducted the necessary discovery under Bankruptcy Rule 2004:

If Pepper [the claimant] needed to conduct discovery before filing a motion to apply Rule 7023, he had ample time to do so under Fed. R. Bankr. P. 2004. Rule 2004 examinations are routinely granted, and are one of the few instances where the Federal Rules of Civil Procedure permit discovery to be taken before filing a motion or commencing an action. Pepper offers no explanation as to why he has not taken a Rule 2004 examination or sought any other discovery to date that could assist him in assembling whatever facts he believes are necessary before filing a motion to apply Rule 7023.

In re Associated Cmty. Servs., Inc., 520 B.R. 650, 655–56 (Bankr. E.D. Mich. 2014).

The Court is obligated to construe and apply the Bankruptcy Rules, including the rules governing discovery, in a manner that secures "the just, speedy, and inexpensive determination" of the proceedings before it. *See* Bankruptcy Rule 1001. Further, in determining the appropriate scope of discovery, the Court must consider "the importance of the issues at stake in the action, the amount in controversy, the parties'

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relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Civil Rule 26(b)(1).

Debtors have already devoted significant resources to opposing the Motion. Where, as here, Movants have had an ample opportunity to conduct discovery in support of the Motion, further discovery would needlessly result in increased expense to the estate. In addition, such further discovery would not likely yield facts which would cause the Court to reconsider its conclusion that the normal claims process is superior to a class proof of claim. In particular, the proposed discovery is unlikely to defeat the Debtors' showing that the individualized damages suffered by proposed class members varies significantly. Consequently, the Court finds that the burden or expense of the proposed discovery outweighs its likely benefit.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Five published and six unpublished decisions have cited *First Alliance*. None of these eleven decisions cite *First Alliance* for the proposition that class actions are particularly appropriate in bankruptcy proceedings or that the party opposing the a class proof of claim bears the burden of proof.

Note 2

These are the same newspapers in which the Debtors published notice of the claims bar date.

Party Information

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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#6.00 Hearing
RE: [1981] Motion Notice of Motion and Motion of Plaintiffs Lynn C. Morris, Hilda L. Daily and Noe Guzman for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated, Memorandum of Points and Authorities (Rich, Emily)

FR. 5-7-19

fr. 5-8-19

Docket 1981

Tentative Ruling:

5/20/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Plaintiffs Lynn C. Morris, Hilda L. Daily and Noe Guzman for Authorization to File a Class Proof of Claim on Behalf of Claimants Similarly Situated [Doc. No. 1980] (the "Motion")
- 2) Debtors' Objection to the Motion of Lynn C. Morris, Hilda Daily and Noe Guzman for Authorization to File a Class Proof of Claim on Behalf of Claimants Allegedly Similarly Situated [Doc. No. 2225] (the "Opposition")
- 3) Response of Claimants Lynn C. Morris, Hilda L. Daily, and Noe Guzman to Debtors' Objection to Motion for Authorization to File Class Claim [Doc. No. 2289] (the "Reply")
 - a) Declaration of Emily P. Rich in Support of [Reply] [Doc. No. 2290]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the

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Debtors' Chapter 11 cases. Doc. No. 17.

Lynn C. Morris, Hilda Daily, and Noe Guzman (collectively, the "Movants") seek authorization to file a class prepetition unsecured proof of claim on behalf of similarly situated creditors. Each Movant is employed at hospitals operated by the Debtors and is a participant in the Debtors' retirement plan. Movants intend to commence litigation against VHS, alleging that VHS diverted assets from Movants' underfunded retirement plan to create a new overfunded retirement plan, and that such actions constituted a breach of fiduciary duties imposed by the Employee Retirement Income Securities Act ("ERISA"). Debtors oppose the Motion, arguing that the Court should not permit the filing of a class proof of claim because Movants' allegations are completely devoid of merit.

A. The Debtors' Retirement Plans

Prior to 2015, the Debtors were operated by the Daughters of Charity under the name Daughters of Charity Health System ("DCHS"). Declaration of Richard G. Adcock in Support of Emergency First-Day Motions [Doc. No. 8] (the "First Day Decl.") at ¶¶ 82–88. In July 2015, DCHS entered into a recapitalization transaction with BlueMountain Capital Management LLC ("BlueMountain"), in which DCHS' name was changed to Verity Health System. *Id.* at ¶ 88. In connection with the BlueMountain transaction, the Debtors retained liabilities with respect to various DCHS pension plans, including a single employer defined benefit plan known as the "Church Plan." Declaration of Carlos De La Parra [Doc. No. 2225] (the "De La Parra Decl.") at ¶ 7. The Church Plan did not comply with ERISA, was not insured by the Pension Benefit Guaranty Corporation (the "PBGC"), and was significantly underfunded. *Id.* at ¶¶ 7–8. The Debtors converted the Church Plan into the Verity Health System Retirement Plan (the "Verity Plan"), which did comply with ERISA and was partially insured by the PGBC. *Id.* at ¶ 7.

Effective December 31, 2016, the Board of Directors of VHS (the "Board") converted the Verity Plan into Plan A and created Plan B. *Id.* at ¶ 9. Plan B was funded with approximately \$7,996,440 from the corpus of the Verity Plan. *Id.* Prior to the creation of Plan B, the Verity Plan had assets of \$274,549,560. *Id.*

The Board conducted a special session on December 28, 2016, to consider the creation of Plan B. According to the minutes of the Board's meeting, Plan B was created "to reduce current and future premium costs from [the PBGC]." Telephonic Meeting Minutes [Doc. No. 2255 at pp. 43–44] (the "Minutes"). The Minutes explain the purpose and structure of the transaction as follows:

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Specifically, the assets spun off to the new de minimis plan [Plan B] must be no more than 3% of the total assets of the Plan before the spin-off per IRS regulations, which is approximately \$8 million. In order to qualify as a de minimis spin-off, a plan sponsor must transfer assets equal to the benefit obligations being spun-off to the new plan. As a result, the spun-off plan is fully funded and does not have a variable-rate premium (“VRP”). The goal of the spin-off is to have as many participants transferred to the spinoff plan as possible because the savings is based on the number of participants in the spinoff plan [Plan B]. Once the headcount is reduced in the original plan [the Verity Plan, which was converted to Plan A] while maintaining the same unfunded obligation, the VRP for the original plan is reduced due to the \$500 per participant cap being applied to a lower headcount. As a result of the spin-off, PBGC premiums paid by the Plan is estimated to decrease by \$300,000 to \$800,000 in 2017. The annual savings will continue for each subsequent year. The actual savings will be determined by the final number of members who can be moved to the new spinoff plan. Management is still finalizing the appropriate categories of employees to transition to the de minimis spinoff plan.

Minutes at ¶ 2.

According to filings with the United States Secretary of Labor, as of December 31, 2015 (prior to the creation of Plan B), the Verity Plan was underfunded, having assets sufficient to cover only 66.36% of the Verity Plan’s liabilities. Schedule SB (Form 5500) for Verity Plan, Plan Year 2015, at Part II, § 14 [Doc. No. 1980, Ex. A]. As of December 31, 2016 (subsequent to the creation of Plan B), the newly-created Plan A (the successor to the Verity Plan) had assets sufficient to cover only 65.41% of Plan A’s liabilities. Schedule SB (Form 5500) for Plan A, Plan Year 2016, at Part II, § 14 [Doc. No. 1980, Ex. B]. That is, subsequent to the creation of Plan B, Plan A’s ability to satisfy its liabilities was reduced by approximately one percentage point, from 66.36% to 65.41%. As of December 31, 2016, Plan B was overfunded, having assets sufficient to cover 128.79% of Plan B’s liabilities. Schedule SB (Form 5500) for Plan B, Plan Year 2016, at Part II, § 14 [Doc. No. 1980, Ex. C].

No member of the Board or of the BAC is a beneficiary of Plan B. Declaration of Steven C. Sharrer [Doc. No. 2255] (the “Sharrer Decl.”) at ¶ 8. No member of the Debtors’ management is a beneficiary of Plan B. *Id.* at ¶ 9.

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B. The Proposed Class Proof of Claim

Movants initially sought authorization to file a class proof of claim which would allege that “the BAC decided to transfer assets out of Plan A, and into Plan B, in order to protect their personal retirement benefits from any negative consequences associated with Plan A’s underfunded status.” Motion at 12. The proposed class claim would further allege that:

- 1) “Each of the BAC members, and approximately 1,000 of their fellow executives, were participants in [the Verity Plan] when the BAC decided to take this action, which included spinning \$7,996,440.00 worth of assets out of the ‘under-funded’ Plan A and into Plan B.” Motion at 12.
- 2) “Each BAC member personally benefited from this spin-off by virtue of Plan B immediately being overfunded by 128.79% (thereby providing each member of the BAC with a much greater degree of retirement security). This constitutes a self-interested benefit obtained by each member of the BAC, in violation of ERISA §§ 406(a)(1)(D), and 406(b)(1).” *Id.* at 12–13.
- 3) “[T]he Debtor, by and through the BAC, breached a fiduciary duty of loyalty owed to [Movants] ... when it made the decision to spin assets off from Plan A, and into Plan B. In so doing, the Debtor and the BAC ... failed to act solely in the interest of all participants and beneficiaries ... [in violation of] ERISA §§ 404(a)(1)(A)(I)–(ii).” *Id.* at 13.
- 4) “[T]he Debtor, by and through the BAC, breached a fiduciary duty of prudence owed to [Movants under] ... ERISA § 404(a)(1)(B) The BAC breached this duty ... when it transferred ... assets out of Plan A ... for the exclusive benefit of Plan B participants.” *Id.*

After the Debtors presented evidence showing that (1) it was the VHS Board, not the BAC, that executed the spinoff and that (2) no members of the Board are beneficiaries of Plan B, Movants modified the theory underlying their proposed class proof of claim. Movants now seek authorization to file a class proof of claim alleging that:

- 1) “[T]he Board exercised discretion to dispose of plan assets in the [Verity Plan], by moving them into Plan B and in doing so, it breached ERISA’s fiduciary duties by failing to act in the best interest of all participants and

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beneficiaries in the [Verity Plan], and by using the assets of the [Verity Plan] to reduce the Debtors' operating costs." Reply at 7–8.

- 2) "[T]he spin-off of Plan B used plan assets and hurt Plan A participants by increasing the underfunding of Plan A, and this decision was made in order to reduce PBGC premiums paid by the employer.... Thus, while acting as a plan sponsor and party-in-interest, VHS made a decision to use plan assets at the expense of Plan A participants in order to benefit itself, the employer.... This is a violation of ERISA § 403 where the \$7.9 million in assets 'inured' to the benefit of the Debtors, and violates ERISA § 406(a)(1)(D) ... because it involved a 'transfer of assets' out of the [Verity Plan] for the use and benefit of the Debtors." *Id.* at 13.

The proposed class would consist of the approximately 6,924 beneficiaries who remained in Plan A subsequent to the spinoff transaction. Movants seek a monetary remedy payable by VHS, as well as attorneys' fees.

C. Summary of Papers Filed in Connection with the Motion

As described above, Movants modified the legal theory underlying their proposed class proof of claim after the Debtors presented evidence showing that certain of Movants' claims were predicated upon a demonstrably false factual predicate. The shift in Movants' legal theory has mooted some of the factual disputes initially placed at issue by the Motion. Specifically, Movants have abandoned their theory that the spinoff was a self-interested transaction by the BAC, and now argue that in executing the spinoff transaction, the Board violated its fiduciary duties to beneficiaries of the Verity Plan (which was subsequently renamed Plan A).

The primary issues that remain in dispute are as follows. First, Debtors assert that Movants' claim for breach of the fiduciary duties imposed by ERISA fails as a matter of law. According to Debtors, the ERISA allegations do not state a claim because the Board was not acting in its fiduciary capacity when it executed the spinoff transaction. Movants contend that the Board was acting in its fiduciary capacity, on the ground that the Board exercised discretionary authority to transfer assets in the Verity Plan into the newly created Plan B.

Second, Debtors contend that class certification would be wasteful and would interfere with the administration of the estate. Debtors note that the PBGC is already pursuing proofs of claim on account of the underfunded status of Plan A. Debtors argue that Movants' proposed class proof of claim is effectively duplicative of the

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claims being pursued by the PBGC. Movants dispute that their proposed class proof of claim is duplicative. Movants argue that unlike the PBGC, they are seeking relief for violations of Title I of ERISA, and that the PBGC lacks standing to pursue such claims.

II. Findings and Conclusions

Class certification is governed by Civil Rule 23. Bankruptcy Rule 7023 provides that Civil Rule 23 “applies in adversary proceedings.” Under Bankruptcy Rule 9014(c), the Court has discretion to apply Bankruptcy Rule 7023 to the claims administration process. Courts have developed a three-factor framework to guide the exercise of this discretion:

- 1) whether the class was certified pre-petition;
- 2) whether the members of the putative class received notice of the bar date; and
- 3) whether class certification will adversely affect the administration of the estate.

In re Chaparral Energy, Inc., 571 B.R. 642, 646 (Bankr. D. Del. 2017).

These factors were first articulated in *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) and are commonly referred to as the “*Musicland* factors.” “No one factor is dispositive; a factor may take on more or less importance in any given case.” *Chaparral Energy*, 571 B.R. at 646.

Only if the Court determines that it is appropriate to apply Bankruptcy Rule 7023 to the claims administration process does the Court proceed to determine whether the requirements of Civil Rule 23 have been satisfied. As explained by the *Chaparral Energy* court:

Whether to permit a class action proof of claim is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, the court must decide whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Second, the court must determine whether the requirements of Federal Rule 23 have been satisfied, such that a class proof of claim may properly be filed.

Id. (internal citations omitted); *see also Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012) (“Civil Rule 23 factors do not become an issue until the bankruptcy court

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determines that Rule 7023 applies by granting a Rule 9014 motion. The issue on such a motion centers more directly on whether the benefits of applying Rule 7023 (and Civil Rule 23) are superior to the benefits of the standard bankruptcy claims procedures.”).

Careful consideration of the *Musicland* factors is necessary because “class certification may be ‘less desirable in bankruptcy than in ordinary civil litigation.’” *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005). Consequently, “[e]ven class actions that were certified prior to the filing for bankruptcy may ... be disallowed.” *Id.*

In *In re First Alliance Mortgage Co.*, the District Court for the Central District of California stated that “class action devices ... are particularly appropriate” in bankruptcy proceedings, and that “the party opposing the use of class devices [bears] the burden.” *First All. Mortg. Co.*, 269 B.R. 428, 445 (C.D. Cal. 2001). In the eighteen years since it was published, no decision—either published or unpublished—has cited *First Alliance* for this proposition. [Note 1] More recent decisions within the Ninth Circuit have approached class proofs of claim in a manner inconsistent with the standard set forth in *First Alliance*.

For example, in *In re Aughney*, the court expunged a class proof of claim, reasoning that the “essential problem with a class proof of claim is that class action procedures often conflict with established bankruptcy procedures.” *Aughey*, No. 10-12666, 2011 WL 479010, at *1 (Bankr. N.D. Cal. Feb. 4, 2011). The court held that “class claims can be allowed, especially where a class was certified before bankruptcy or principles of equity and simple justice militate in favor of a claim being pursued on behalf of a class,” but emphasized that a “prerequisite for allowance ... is that the proponent must seek and obtain a determination of the Bankruptcy Court that Rule 7023 of the Federal Rules of Bankruptcy Procedure be made applicable to the claims process.” *Id.* In *Westfall v. MII Liquidation Inc.*, the District Court upheld the Bankruptcy Court’s denial of class certification, explaining that “bankruptcy courts have broad discretion to allow or disallow such class claims.” *Westfall*, No. 06-CV-02343-BENNLS, 2007 WL 2700951, at *4 (S.D. Cal. Sept. 11, 2007).

Courts outside the Ninth Circuit have also declined to follow *First Alliance*. In *Gentry v. Siegel*, the court “weighed the benefits and costs of class litigation against the efficiencies created by the bankruptcy claims resolution process.” *Gentry*, 668 F.3d 83, 92 (4th Cir. 2012). The court “looked at the issue both on a systemic level and in light of the facts specific to [the] case.” *Id.*

First Alliance’s holding that class actions are particularly appropriate in

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bankruptcy proceedings, and that the party opposing a class proof of claim bears the burden of proof, is also inconsistent with the *Musicland* factors. The *Musicland* factors—which have been widely adopted—do not contain a presumption in favor of a class proof of claim. To the contrary, application of the *Musicland* factors requires an "exercise of ... discretion" and "a fact and case specific analysis." *Chaparral Energy*, 571 B.R. at 646. The Court declines to follow *First Alliance* for the propositions that class actions are particularly appropriate in bankruptcy or that the party opposing class certification bears the burden of proof. Instead, the Court applies the *Musicland* factors to determine whether Civil Rule 23 should be made applicable to the claims administration process.

A. Factors 1 and 2: Prepetition Certification and Notice of the Bar Date

The first *Musicland* factor is whether the putative class was certified prepetition. The second factor is whether putative class members received notice of the bar date. The first two factors “are critical” and are often evaluated concurrently. *Musicland*, 362 B.R. at 655. “[Putative members of an uncertified class members who received actual notice of the bar date but did not file timely claims are the least favored candidates for class action treatment.” *Id.* Allowing class certification for such creditors would effectively extend “the bar date for the benefit of those who sat on their rights ... at the expense of vigilant creditors who observed the bar date.” *Id.*

1. Prepetition Certification

The putative class has not been certified prepetition. In fact, no litigation has been commenced at all. The allegedly wrongful conducted occurred on December 31, 2016. The publicly available forms reporting the funding status of Plans A and B which supply the basis for Movants’ allegations were filed with the Department of Labor on October 10, 2017. *See* Schedule SB (Form 5500) for Plan A, Plan Year 2016 [Doc. No. 1980, Ex. B] and Schedule SB (Form 5500) for Plan B, Plan Year 2016 [Doc. No. 1980, Ex. C]. The Debtors sought bankruptcy protection on August 31, 2018. Movants’ claims arose and could have reasonably been discovered sufficiently far in advance of the Petition Date to permit prepetition class certification. At the very least, litigation could have been commenced prepetition. Yet even after expiration of the bar date and the filing of the motion seeking class certification, Movants still had not finalized the legal theory underlying their proposed class complaint.

The changes in Movants’ legal theory are not minor. Movants initially alleged that members of the BAC engaged in a self-interest transaction by creating the overfunded

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Plan B for their own benefit. After the Debtors presented evidence showing that BAC members are not beneficiaries of Plan B, Movants alleged that in creating Plan B, the VHS Board violated its fiduciary duties to beneficiaries of the Verity Plan and Plan A (the successor to the Verity Plan). According to this new theory, the insurance savings resulting from Plan B's creation inured to VHS' benefit, but the harm resulting from the concomitant reduction in Plan A's assets was born by the Debtors' employees.

[Note 2]

Movants' approach to the proposed class proof of claim is not well taken. Movants' initial legal theory was based upon a false factual assumption—that the BAC created Plan B for its own benefit—that could have easily been discovered. The Debtors sought bankruptcy protection on August 31, 2018. At any time after this date, Movants could have sought information from the Debtors in support of their class proof of claim under Bankruptcy Rule 2004. An examination under Rule 2004 may relate “to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate” In Chapter 11 cases, the examination “may also relate to ... any ... matter relevant to the case or to the formulation of a plan.” “The scope of a Rule 2004 examination is exceptionally broad,” and Rule 2004 examinations “have been compared to a ‘fishing expedition.’” *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999). Rule 2004 contains a mechanism for compelling the production of documents. *See* Bankruptcy Rule 2004(c). At least one court has recognized that Rule 2004 is an appropriate means of obtaining discovery in support of a proposed class proof of claim. *See In re Associated Cmty. Servs., Inc.*, 520 B.R. 650, 655–56 (Bankr. E.D. Mich. 2014) (“If Pepper [the claimant] needed to conduct discovery before filing a motion to apply Rule 7023, he had ample time to do so under Fed. R. Bankr. P. 2004. Rule 2004 examinations are routinely granted, and are one of the few instances where the Federal Rules of Civil Procedure permit discovery to be taken before filing a motion or commencing an action. Pepper offers no explanation as to why he has not taken a Rule 2004 examination or sought any other discovery to date that could assist him in assembling whatever facts he believes are necessary before filing a motion to apply Rule 7023.”).

In addition to the fact that the putative class was not certified prepetition, Movants' proposed claims are wholly without merit. The Court recognizes that in determining whether to apply Civil Rule 23 to the claims administration process, the focus is typically not upon the merits of the underlying claims. Nonetheless, application of the *Musicland* factors requires “a fact and case specific analysis.”

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Chaparral Energy, 571 B.R. at 646. In conducting that case specific analysis, the Court has an obligation to screen out nonmeritorious class proofs of claim in order to conserve estate resources. That is particularly the case where, as here, Movants have abused the litigation process by first filing a class proof of claim containing allegations which Movants should have known lacked evidentiary support, and then by dramatically modifying their legal theory after the Debtors pointed out the claims' fundamental defects.

Movants allege that by executing the spinoff transaction, the Board violated its fiduciary duties to those participants in the Verity Plan that were subsequently transferred to Plan A. Movants' theory is that the spinoff harmed participants in Plan A by reducing the assets available to satisfy Plan A's obligations.

Movants' allegations that the Board violated the fiduciary duties imposed by ERISA fail as a matter of law. The "threshold question" in an action charging breach of fiduciary duty under ERISA is "not whether the actions of some person ... adversely affected a plan beneficiary's interest, but whether that person was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to complaint." *Pegram v. Herdrich*, 530 U.S. 211, 226 (2000). Here, the Board was not acting in a fiduciary capacity when it executed the spinoff transaction.

Through the spinoff transaction, the Board amended the Verity Plan "by spinning off to a new and separate plan maintained by Verity [Plan B] the liability attributable to certain participants in the Plan and assets equal to such liability." Resolution 2016-12-28-1 of the Board of Directors of Verity Health System of California, Inc. Re: Approval of Spinoff Retirement Plan [Doc. No. 2255 at pp. 46-47] (the "Spinoff Resolution"). In so amending the Verity Plan, the Board was not acting in its fiduciary capacity within the meaning of ERISA because "[p]lan sponsors who alter the terms of a plan do not fall into the category of fiduciaries." *Lockheed Corp. v. Spink*, 517 U.S. 882, 890, 116 S. Ct. 1783, 1789, 135 L. Ed. 2d 153 (1996). As the Supreme Court has held, "employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. When employers undertake those actions, they do not act as fiduciaries, but are analogous to the settlors of a trust." *Id.* (internal citations and quotation marks omitted). Applying *Lockheed*, the Ninth Circuit has held that "a decision to spin a plan off ... is not a fiduciary act." *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1076 (9th Cir. 2009).

The Ninth Circuit's opinion in *Paulsen v. CNF Inc.* relied upon *Systems Council EM-3 v. AT&T Corp.*, 159 F.3d 1376 (D.C. Cir. 1998). *Systems Council* is instructive, as its facts are similar to the instant matter. In *Systems Council*, AT&T decided to

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reorganize its corporate structure by spinning off operations into separate businesses, one of which was Lucent. *Id.* at 1378. Pursuant to the reorganization, AT&T executed an agreement with Lucent, under which AT&T would spinoff assets in its employee benefit plan to a plan established for the benefit of Lucent. *Id.* The plaintiffs alleged that AT&T violated fiduciary duties imposed by ERISA by favoring itself in the allocation of plan assets. *Id.* The court dismissed the complaint, concluding that AT&T was not acting in its fiduciary capacity when it amended the plan to allocate assets and liabilities between AT&T and Lucent. *Id.* at 1379–80.

As in *Systems Council*, here the Board amended the Verity Plan to allocate assets and liabilities between Plan A and Plan B. As was the case in *Systems Council*, the amendment to accomplish the allocation does not constitute a fiduciary act.

Movants further allege that the spinoff transaction violated ERISA § 403(c). ERISA § 403(c) provides in relevant part:

[T]he assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

Movants' theory is that in spinning off 3% of the Verity Plan's assets to create Plan B, VHS caused such assets to inure to its benefit, because the purpose of the spinoff transaction was to reduce the amount of premiums VHS was obligated to pay to the PBGC.

This allegation is without merit. First, the allegation fails because the Board was not acting in its fiduciary capacity when executing the spinoff transaction, for the reasons set forth above. Second, ERISA § 403(c)'s anti-inurement provision "demands only that plan assets be held for supplying benefits to plan participants." *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 22, 124 S. Ct. 1330, 1344, 158 L. Ed. 2d 40 (2004). VHS' receipt of benefits in the form of reduced PBGC premiums does not qualify as a violation of the anti-inurement provision. The purpose of that provision "is to apply the law of trusts to discourage abuses such as self-dealing, imprudent investment, and misappropriation of plan assets, by employers and others." *Id.* at 23. The assets transferred to Plan B were held to supply benefits to Plan B's participants; there is no allegation that VHS misappropriated or embezzled Plan B's assets.

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2. Notice of the Bar Date

The Debtors provided notice of the bar date to Plan A participants who were current employees of the Debtors on the Petition Date. All Plan A participants who were former employees were kept apprised of important dates in the cases by the Plan A administrator. Adcock Decl. at ¶ 6. It is not clear from the record whether the Plan A administrator provided notice of the bar date to former employees.

However, whether plan participants received notice of the bar date is not relevant for purposes of determining the appropriateness of class certification, because individual plan participants lack standing to pursue claims on behalf of Plan A. The PBGC has advised the Debtors that it will shortly initiate the process of terminating Plans A and B. Sharrer Decl. at ¶ 12–13. “Upon distress termination, employers are liable to PBGC for any unfunded benefit liabilities. After recovery from the employer, PBGC must pay plan participants all guaranteed benefits and a portion of non-guaranteed benefits based on a statutory formula.” *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1074 (9th Cir. 2009). The Ninth Circuit has held that where a plan is subject to a distress termination, plan participants lack standing to assert claims against the plan sponsor for breach of ERISA fiduciary duties. *Id.* at 1073. Recovery for a breach of fiduciary duties inures to the benefit of the plan as a whole, and not to an individual beneficiary. *Id.* Since upon distress termination the plan is under the control of the PBGC, any recovery would go to the PGBC, which is already required to distribute benefits in accordance with a detailed statutory formula. *Id.* at 1073–74. Therefore, courts lack the ability to redress the plan participants’ injury through a favorable decision. *Id.* at 1074. *See also In re Adams Hard Facing Co.*, 129 B.R. 662, 663 (W.D. Okla. 1991) (holding that if plan participants “make claims directly against the bankruptcy estate, the purposes of ERISA § 4022(c) will be defeated”); *United Steelworkers of America, AFL-CIO, CLC v. United Eng’g, Inc.*, 52 F.3d 1386, 1392 (6th Cir. 1995) (“Several courts that have addressed the issue that confronts us today have held that ERISA now preempts direct against the employer”).

Because Plan A participants lack standing to assert their claims, the fact that certain Plan A participants may not have received actual notice of the bar date is immaterial.

B. Factor 3: Whether Class Certification Will Adversely Affect the Administration of the Estate

Class certification will adversely affect the administration of the estate. As discussed above, class certification would be pointless because the claims are wholly

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without merit and the Plan A participants lack standing to assert their claims. But even if that were not the case, class certification would be adverse to the administration of the estate because the PBGC has filed proofs of claims that are effectively duplicative of the proposed class proof of claim.

In Proof of Claim No. 4318 ("Claim 4318"), the PBGC asserts a claim in the amount of \$310.3 million for the unfunded benefit liabilities of Plan A. In Proof of Claim No. 4325 ("Claim 4325"), the PBGC asserts a claim in the amount of approximately \$30.6 million for unpaid minimum funding contributions to Plan A. In Proof of Claim No. 4327 ("Claim 4327"), the PBGC asserts a claim in the approximate amount of \$27 million for insurance premiums, interest, and penalties in connection with Plan A.

The gravamen of Movants' claim is that through the creation of Plan B, VHS increased the unfunded benefit liabilities of Plan A. The PBGC's proofs of claim seek recovery on account of Plan A's unfunded benefit liabilities. Movants assert that their proposed class proof of claim differs from the PBGC's claims. Movants note that they seek recovery for breaches of fiduciary duty under Title I of ERISA, a form of relief that the PBGC lacks standing to pursue.

It is true that the statutory predicate for Movants' claim differs from that of the PBGC's claims. However, both sets of claims exist only because Plan A is underfunded. The PBGC's proofs of claim seek relief on account of Plan A's underfunded status for the purpose of redressing the injury suffered by Plan A participants. The ultimate relief sought by the PBGC—recovering assets for the underfunded Plan A—is the same as that sought by Movants. In this sense, the relief sought by Movants is duplicative of that sought by the PBGC. In determining whether to apply Civil Rule 23 to the claims administration process, it is appropriate for the Court to be cognizant of this reality. In *In Re Mirant Corporation*, the court declined to permit class certification because the interests of the proposed class members were being pursued "by various arms of local and state governments and [the Federal Energy Regulatory Commission]." *Mirant*, 321 B.R. 189, 199 (Bankr. N.D. Tex. 2005). Denial of class certification is likewise appropriate here given that the interests of the proposed class members are being pursued by the PBGC. Certifying the class proposed by Movants would mean that two separate entities, Movants and the PBGC, would be competing for assets that will go to the same place.

C. The *Musicland* Factors Weigh Against Applying Civil Rule 23 to the Claims Administration Process

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As set forth above, all three *Musycland* factors weigh against applying Civil Rule 23 to the claims administration process. Accordingly, the Court declines to apply Civil Rule 23 and declines to authorize Movants to proceed with the proposed class proof of claim. Because the Court will not apply Civil Rule 23, it is not necessary for the Court to address whether Movants have met the class certification requirements of numerosity, commonality, typicality, and adequacy.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Five published and six unpublished decisions have cited *First Alliance*. None of these eleven decisions cite *First Alliance* for the proposition that class actions are particularly appropriate in bankruptcy proceedings or that the party opposing a class proof of claim bears the burden of proof.

Note 2

In an attempt to salvage their initial theory that the BAC wrongfully executed the spinoff to protect the retirement benefits of BAC members, Movants argue that the evidence presented by the Debtors shows only that no current member of the BAC is a beneficiary of Plan B. Movants contend that the Debtors' evidence does not rule out the possibility that former members of the BAC may be beneficiaries of Plan B.

The declaration of Steven C. Sharrer, the Debtors' Chief Human Resource Officer, provides that "[n]either I nor any other member of the BAC is a beneficiary of Plan B." Sharrer Decl. at ¶ 8. The Sharrer Declaration further provides that "[n]o member

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of management of the Debtors or the Board of Directors of VHS is a Plan B beneficiary." Id. at ¶ 9. The Sharrer Declaration does not specify the time frame to which these statements apply. However, when reading the statements in context, it is clear that they are intended to refer to the time period during which the spinoff transaction was executed. The Court finds that the Sharrer Declaration sufficiently establishes that no members of the BAC, the Board, or the Debtors' management were beneficiaries of Plan B at the time the Board voted to execute the spinoff transaction.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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11:00 AM

2:18-20013 David Russell Clough

Chapter 7

#100.00 Hearing
RE: [15] Motion to Convert Case From Chapter 7 to 13

fr. 12-4-18; 3-19-19

Docket 15

***** VACATED *** REASON: CONTINUED 7-23-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

Trustee(s):

Heide Kurtz (TR)

Represented By
Robert A Hessling

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11:00 AM

2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#101.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding with Memorandum of Points
and Authorities in support thereof (Barasch, Adam)

Docket 9

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

BANK OF AMERICA NATIONAL

Represented By
Adam N Barasch

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Sergio Lopez Miranda

Represented By
David A Akintimoye

Esmeralda Miranda

Represented By
David A Akintimoye

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2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#102.00 HearingRE: [104] Motion for approval of chapter 11 disclosure statement with Disclosure Statement and Plan Attached as Exhibits 1 and 2

Docket 104

Tentative Ruling:

5/20/2019

For the reasons set forth below, the Disclosure Statement, as modified by the JPMorgan Stipulation and related Order [Doc. Nos. 107 & 109], is APPROVED.

Pleadings Filed and Reviewed

1. Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 102] (the "Disclosure Statement")
2. Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan")
3. Debtors Motion for Order Approving the Adequacy of the Debtors' Disclosure Statement and Setting Dates and Procedures for Approval of Plan of Reorganization [Doc. No. 104] (the "Motion")
4. Order Granting Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 82]
5. Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 107] (the "JPMorgan Stipulation")
6. Order on Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 109] (the "Order on JPMorgan Stipulation")
7. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Debtors-in-possession, Damu Vusha and Akiba Vusha (the "Debtors"), filed this voluntary chapter 11 case on February 5, 2018 (the "Petition Date"), to avoid a foreclosure sale initiated by Wells Fargo N.A. ("Wells Fargo") on behalf of US Bank

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National Association ("US Bank") against their principal residence. The Debtors state that after seeking bankruptcy protection they successfully negotiated a global settlement with Wells Fargo and US Bank that provided for (i) a loan modification with a reduced interest rate and the addition of all outstanding arrears onto the principal balance to be repaid over 228 months, and (ii) the resolution of a pre-petition state court lawsuit the Debtors initiated against Wells Fargo and US Bank. *See* Doc. Nos. 73 & 82.

The Debtors' primary assets consist of three real properties: (1) their principal residence located at 6122 S. Kings Road, Los Angeles, CA 90056 (the "Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and 1300 W. 69th Street, Los Angeles, CA 90044 (the "69th Street Property"). The Debtors also own and operate a residential care facility called Jatkodd Crisis Intervention Center (the "Business") which provides 24/7 care to four developmentally disabled individuals. The Business operates out of the Wilton Property and pays the Debtors monthly rent. The Debtors submit that post-petition operations from the Business have been profitable. The Debtors also lease out the 69th Street Property for additional monthly income.

The Debtors now move for an order approving the adequacy of their Disclosure Statement. The Disclosure Statement details the events which led to this bankruptcy filing and provides a description of significant post-petition events. The Disclosure Statement describes the proposed Plan's classification scheme and treatment of claims. The Debtors propose a 100% reorganization Plan that will be funded over sixty months by the following sources: (i) income from the Business; (ii) rental income from the Wilton Property and 69th Street Property; (iii) the Debtors' social security income; and (iv) \$2,500 in monthly contributions from one of the Debtor's mother. The Disclosure Statement advises that all classes are impaired and, accordingly, entitled to vote. The Disclosure Statement also states that the Debtors will assume their lease agreements for the Wilton and 69th Street Properties.

The Disclosure Statement states that the potential risk of the proposed Plan is that the Debtors will not have sufficient cash flow to pay all of the obligations created under the Plan. However, the Debtors attached financial projections as Exhibit C to the Disclosure Statement and believe that their Plan is feasible and that they will be able to meet all of their financial obligations. The Debtors have also included a

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liquidation analysis as Exhibit E to the Disclosure Statement, which shows that creditors will receive the same 100% distribution through their Plan than if the case were converted to a case under chapter 7. The Debtors propose an Effective Date that is the first business day that is fourteen (14) calendar days after the entry of the order confirming the Plan, with payment beginning by the first day of the following month.

Finally, the Debtors request that if the Court finds that the Disclosure Statement contains adequate information the Court set May 31, 2019 as the deadline to disseminate the voting package and June 30, 2019 as the deadline to return ballots in favor of or against the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer;

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(6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement describes (1) the factors precipitating the Chapter 11 filing, (2) a description of the Debtors’ assets and their estimated values, (3) significant events that occurred during the Chapter 11 case, (4) the classification structure of the Plan, (5) a liquidation analysis, (6) a disclaimer, (7) risk factors, (8) estimated administrative expenses, and (9) the means for execution of the Plan.

Although the following is a plan confirmation issue, the Debtors should be aware that the Court will require some evidence to be submitted in support of the Confirmation Motion (defined below) that supports the Debtors’ mother’s financial ability to make \$2,500 in monthly plan contributions since it appears that her contribution is necessary to make the Plan feasible.

The following dates and deadlines will apply to solicitation and confirmation of the Debtors’ Plan:

- 1) A hearing will be held on the confirmation of the Debtors’ Chapter 11 Plan

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of Reorganization on **August 7, 2019, at 10:00 a.m.**

- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan and, if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **May 31, 2019**.
- 3) **July 2, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date. [**Note 1**]
- 4) **July 17, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtors have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **July 24, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **July 31, 2019** is fixed as the last day on which the Debtors may file and serve a reply to any opposition to the Confirmation Motion ("Reply").

III. Conclusion

For the reasons set forth above, the Disclosure Statement, as modified by the JPMorgan Stipulation and related Order [Doc. Nos. 107 & 109], is APPROVED.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court acknowledges the Debtors' request for a June 30, 2019 deadline, but since that date falls on a Sunday, the Court finds appropriate to set a deadline that falls on a business day.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:19-13763 Ya-Chuan Victor Lee

Chapter 11

#103.00 Hearing
RE: [6] Motion to Use Cash Collateral (with proof of service)

Docket 6

***** VACATED *** REASON: ORDER ENTERED 5-14-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ya-Chuan Victor Lee

Represented By
Marcus G Tiggs

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2:18-13131 Dwight Gregory Stephens

Chapter 11

#1.00 Hearing
RE: [90] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 90

***** VACATED *** REASON: PER ORDER ENTERED 5-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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2:19-10237 Bona Fide Ventures LLC

Chapter 11

#2.00 HearingRE: [49] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 49

Tentative Ruling:

5/21/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 49] (the "Motion to Dismiss")
2. Notice of Motion to Dismiss [Doc. No. 51]
3. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Bona Fide Ventures, LLC (the "Debtor") filed this voluntary chapter 11 case on January 9, 2019 (the "Petition Date"). As of the Petition Date, the Debtor asserted an interest in five parcels of real property:

1. 1701 Irvine Blvd., Newport Beach, CA 92660 (the "Irvine Property")
2. 998 Air Base Road, Adelanto 92301 [APN 0459-432-22] ("Lot 1")
3. Vacant land [APN 0459-432-14] ("Lot 2," and together with Lot 1, the "Vacant Lots")
4. Vacant land at El Privilegio Road, Adelanto, CA 92808 [APN 3210-571-04] (the "El Privilegio Lot")
5. 22760 Palos Verdes Drive East, Rancho Palos Verdes, CA 90275 (the "Palos Verdes Property").

On March 19, 2019, the Court entered orders granting relief from the automatic

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stay affecting the Palos Verdes Property [Doc. No. 42], the Irvine Property [Doc. No. 43] and the Vacant Lots [Doc. No. 44] (collectively, the "Stay Relief Orders"). Since that time, the docket does not reflect any activity in this case.

The Office of the United States Trustee (the "UST") seeks an order dismissing this case based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed;
- ii. Debtor has failed to:
 - a. Provide sufficient evidence of the Debtor's closing of all pre-petition bank accounts,
including closing bank statements;
 - b. Provide sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts;
 - c. Provide sufficient evidence of current insurance coverage for the remaining vacant
land in Adelanto, CA and 9998 Air Base Road, Adelanto, CA 92301;
 - d. Provide a projected cash flow statement for the first ninety days of operation under
chapter 11;
 - e. Provide a statement of major issues and timetable report;
 - f. File monthly operating reports since the inception of this case; and
 - g. Pay 1st quarter 2019 UST fees (2nd quarter 2019 USTs fees are currently accruing)
- iii. The fact that the Court granted relief from stay with respect to a number of the Debtor's properties.

See Declaration of Gary Baddin (the "Baddin Decl.").

Based on the foregoing, the UST asserts that cause exists under § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case. The UST has reviewed the Debtor's Schedules and recommends that the case be dismissed because the Court has already granted several secured creditor's requests for relief from the automatic stay and there are no unsecured creditors listed in the Debtor's Schedules.

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As of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(B) gross mismanagement of the estate;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

The Court finds that "cause" exists within the meaning of § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case based upon the long list of deficiencies listed in the Motion to Dismiss and Baddin Declaration.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The Court has reviewed the Debtor's Schedules and agrees with the UST that dismissal is in the best interest of creditors in light of the Court's Stay Relief Orders and the absence of any unsecured creditors.

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III. Conclusion

For the reasons set forth above, the Motion to Dismiss is GRANTED.

The UST is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bona Fide Ventures LLC

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 HearingRE: [2296] Motion to Reject Lease or Executory Contract Debtors' Notice of Motion and Motion to Reject Certain Executory Contracts Pursuant to 11 U.S.C. Section 365(A); Memorandum of Points and Authorities In Support Thereof; Declaration of Richard G. Adcock in Support

Docket 2296

Tentative Ruling:

5/21/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Reject Certain Executory Contracts Pursuant to 11 U.S.C. § 365(a) [Doc. No. 2296] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Debtors' Notice of Motion and Motion to Reject Certain Executory Contracts Pursuant to 11 U.S.C. § 365(a) [Doc. No. 2344]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Notice of Motion and Motion to Reject Certain Executory Contracts Pursuant to 11 U.S.C. § 365(a) [Doc. No. 2348]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors move to reject various executory contracts and unexpired leases (collectively, the "Agreements"). The majority of the Agreements relate to clinics formerly operated by Verity Medical Foundation (the "Clinics") that have been sold or have ceased operations. Debtors seek to reject the Agreements given that they are no longer necessary.

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The Official Committee of Unsecured Creditors (the "Committee") does not object to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract:

In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." ...

Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that the Debtors have shown sufficient cause to reject the Agreements. As the Clinics have been sold or ceased operations, the Agreements are no longer necessary and continue to generate expenses.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz

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at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

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#4.00 HearingRE: [2314] Motion to Assume Lease or Executory Contract Debtors Notice And Motion To Approve (I) Assumption And Assignment Of Executory Contract And (II) Stipulation Among Debtors, Health Net Of California, Inc. And Silicon Valley Medical Development Re: Assumption And Assignment Of Executory Contract; Declaration Of Richard G. Adcock In Support Thereof (Moyron, Tania)

Docket 2314

Tentative Ruling:

5/21/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice and Motion to Approve (I) Assumption and Assignment of Executory Contract and (II) Stipulation Among Debtors, Health Net of California, Inc. and Silicon Valley Medical Development Re: Assumption and Assignment of Executory Contract [Doc. No. 2314] (the "Motion")
 - a) Order Setting Hearing on Motion to Approve Assumption and Assignment of Executory Contract [Doc. No. 2314] for May 22, 2019, at 10:00 a.m. [Doc. No. 2322]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2314, 2315, 2322, 2231, and 2332 [Doc. No. 2341]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion to Approve (I) Assumption and Assignment of Executory Contract and (II) Stipulation Among Debtors, Health Net of California, Inc. and Silicon Valley Medical Development Re: Assumption and Assignment of Executory Contract [Doc. No. 2349]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the

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Debtors' Chapter 11 cases.

Debtors move for entry of an order (1) authorizing the assumption and assignment of an executory contract (the "Health Net Contract") to Silicon Valley Medical Development, LLC ("SVMD"), and (2) approving a stipulation among the Debtors, Health Net of California, Inc. ("Health Net") and SVMD, regarding the assumption and assignment of the Health Net Contract (the "Stipulation").

On March 27, 2019, the Court granted the Debtors' motion to sell certain assets to SVMD (the "SVMD Sale Motion"). Doc. No. 1919. The SVMD Sale Motion proposed assumption and assignment of multiple executory contracts from the Debtors to SVMD, including the Health Net Contract. After Health Net filed a limited opposition objecting to the assumption and assignment of the Health Net Contract, the Debtors removed the Health Net Contract from the list of executory contracts to be assumed and assigned to SVMD.

Since approval of the SVMD Sale Motion, Health Net, the Debtors, and SVMD (collectively, the "Parties") have engaged in extensive negotiations and have reached an agreement providing for the assumption and assignment of the Health Net Contract to SVMD. The Parties have agreed that SVMD will pay a cure amount of \$12,837.25 to Health Net as a condition to assumption and assignment of the Health Net Contract from the Debtors to SVMD. SVMD has agreed that it must satisfy Health Net's Pre-Delegation Audit, which will continue on and after the effective date of the assignment.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Motion. No other opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

Pursuant to § 365(b)(1), if there has been a default in the executory contract to be

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assumed, the Debtor may not assume the contract unless the Debtor:

- a) cures, or provides adequate assurance that the [Debtor] will promptly cure, such default;
- b) compensates, or provides adequate assurance that the [Debtor] will promptly compensate, a party other than the debtor to such contract ..., for any actual pecuniary loss to such party resulting from such default; and
- c) provides adequate assurance of future performance under such contract or lease.

Pursuant to § 365(f)(2), the Debtor may assign an executory contract that it has assumed in accordance with § 365(b)(1).

Here, the Court finds that the Debtor has exercised its sound business judgment in assuming and assigning the Health Net Contract. Assumption and assignment of the Health Net Contract will permit the completion of the SVMD Sale as proposed in the SVMD Sale Motion. The Court finds that the cure amount of \$12,837.25 to be paid by SVMD compensates Health Net for any defaults under the Health Net Contract. The Stipulation providing for the assumption and assignment of the Health Net Contract is approved.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II

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Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#100.00 Hearing re [139] Motion For Order Disallowing Claim No. 6 Filed By Sheryl Oberian Warren-Carey.

Docket 0

Tentative Ruling:

5/21/2019

For the reasons set forth below, the Claim Objection is SUSTAINED IN-PART and DENIED IN-PART. Claim 6 shall be reclassified as a tardily filed general unsecured claim in the amount of \$69,500 in favor of New Genesis Enterprises, Inc. and subordinated to timely filed claims pursuant to § 726(a)(3).

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Disallowing Claim No. 6 Filed by Sheryl Oberian Warren-Carey [Doc. No. 139] (the "Claim Objection")
2. Notice of Objection to Claim [Doc. No. 140]
3. Response to Motion for Order Disallowing Claim No. 6 Filed by Sheryl Oberian Warren-Carey [Doc. No. 142] (the "Claimant's Response")
4. Reply to Response to Motion for Order Disallowing Claim No. 6 Filed by Sheryl Oberian Warren-Carey [Doc. No. 143] (the "Trustee's Reply")

I. Facts and Summary of Pleadings

SB 246 & Cebada Group Inc. (the "Debtor") filed this voluntary chapter 7 case on June 30, 2009 (the "Petition Date"). Shortly thereafter, John J. Menchaca was appointed to serve as the chapter 7 trustee (the "Trustee") and continues to serve in that capacity. On April 8, 2010, the Trustee filed a "Notice of Possible Dividend and Order Fixing Time to File Claims," which set July 12, 2010 as the deadline for creditors to file timely proofs of claim (the "Claims Bar Date") [Doc. Nos. 23-1 & 27].

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On July 6, 2018, Sheryl Oberian Warren Carey ("Ms. Warren-Carey"), acting as the president of New Genesis Enterprises, Inc. ("Claimant"), filed Proof of Claim No. 6 ("Claim 6") asserting a claim for \$350,000 against the Debtor's estate based on "Money Loaned." Claimant asserted that \$250,000 of the claim is secured by a perfected "deed of trust and checks," and the remaining \$100,000 is entitled to treatment as a general unsecured claim. In support of Claim 6, Claimant attached a copy of a Short Form Deed of Trust and Assignment of Rents securing indebtedness in the amount of \$250,000, recorded with the Los Angeles County Recorder's Office on January 3, 2005, and copies of four checks drawn by New Genesis Enterprises ("NGE") to the Debtor in the amount of \$69,500.

Summary of Claim Objection

On April 15, 2019, the Trustee filed an objection to Claim 6 that requests an order disallowing the claim in full (the "Claim Objection"). First, the Trustee argues that Claimant has not established entitlement to a secured claim. Although the Trustee acknowledges that the Debtor's Schedule D scheduled a secured claim for New Genesis Enterprises in the amount of \$296,000, the Trustee notes that the Debtor did not provide a description of the collateral that allegedly secured the claim. Additionally, the Trustee states that as of the Petition Date, the Debtor did not have any interest in real property located in Los Angeles County. Rather, the Trustee states that the Debtor's Schedule A identified an undivided 50% interest in real property consisting of 514 acres of land located in Lompoc, California, Santa Barbara County (the "Property"). The Trustee states that the preliminary title report for the Property does not reflect any lien in favor of Claimant and highlights that on October 20, 2010, the Court entered an order granting the Trustee's motion to sell the Property [Doc. No. 50] and escrow closed in December 2010.

Next, the Trustee objects to Claim 6 on the basis that the documentation does not support an unsecured claim for \$100,000 because the attached checks only total \$69,500 and offer no explanation as to what the loans were for. The Trustee also argues that Claimant has not submitted any evidence establishing the nexus between Ms. Warren-Carey and NGE to support a claim payable to Ms. Warren-Carey. Therefore, the Trustee states that to the extent Claimant can offer a satisfactory explanation supporting that relationship, Claimant should be entitled to a \$69,500 unsecured claim, at most.

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Finally, the Trustee argues that because Claim 6 was filed several years after the Claims Bar Date, to the extent it is allowed in any amount, it should be subordinated to timely filed claims pursuant to § 726(a)(3) of the Bankruptcy Code.

Therefore, the Trustee requests that Claim No. 6 be disallowed in its entirety or allowed as a tardily filed general unsecured claim in the amount of \$69,500.

Summary of Claimant's Response

Claimant filed a timely response stating that after reviewing the Claim Objection, she recognizes and agrees that Claim 6 should be reclassified as a general unsecured claim in the amount of \$69,500. Claimant also explains that NGE is a Nevada Corporation established in 1996 and attaches evidence demonstrating that Ms. Warren-Carey has served as the sole officer and director since its incorporation.

Summary of Trustee's Reply

The Trustee filed a timely reply stating that after reviewing Claimant's Response and supporting evidence, the Trustee is willing to agree to allow Claim 6 as a general unsecured claim in the amount of \$69,500 in favor of New Genesis Enterprises instead of in favor of Ms. Warren-Carey. However, the Trustee maintains his position that the claim should still be subordinated to timely filed claims since Claim No. 6 was filed late.

II. Findings of Fact and Conclusions of Law

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence

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"tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the prima facie validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299-301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.*

The Court finds that Claim 6 was filed in accordance with Bankruptcy Rule 3001 and is therefore entitled to a *prima facie* presumption of validity. However, the Trustee has satisfied his burden of overcoming that presumption by filing an objection asserting that the evidence does not support a finding that Claimant is entitled to a claim in the amount of \$350,000 or that the alleged debt is entitled to payment as a secured claim. Furthermore, in light of Claimant's Response, the Court finds it appropriate to allow Claim 6 as a general unsecured claim in favor of NGE in the amount of \$69,500.

The Court also agrees that because Claim 6 was tardily filed after the Claims Bar Date any distribution on account of the claim shall be deferred pursuant to § 726(a)(3).

III. Conclusion

For the reasons set forth above, the Claim Objection is SUSTAINED IN-PART and DENIED IN-PART. Claim 6 shall be reclassified as a tardily filed general unsecured claim in the amount of \$69,500 in favor of New Genesis Enterprises, Inc. and subordinated to timely filed claims pursuant to § 726(a)(3).

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#101.00 Hearing
RE: [11] Motion to Dismiss Adversary Proceeding Notice Of Motion And Defendant's Motion For An Order Dismissing All Three Claims For Relief Asserted By Plaintiff Based On Failure To State A Claim Upon Which Relief Can Be Granted And Failure To Plead Fraud With Particularity, Or, In The Alternative, For A More Definite Statement; Memorandum Of Points And Authorities (Reeder, David)

fr. 5-8-19; 5-15-19

Docket 11

Tentative Ruling:

5/21/2019

For the reasons set forth below, the Motion is GRANTED and the Complaint is DISMISSED, but Plaintiff is given leave to amend. A First Amended Complaint shall be filed by no later than **June 5, 2019**.

Pleadings Filed and Reviewed:

- 1) Complaint for Determination that Debtors are Non-Dischargeable and Damages [Doc. No. 1] (the "Complaint")
- 2) Notice of Motion and Defendant's Motion for an Order Dismissing All Three Claims for Relief Asserted by Plaintiff Based on Failure to State a Claim Upon Which Relief Can Be Granted and Failure to Plead Fraud with Particularity, or, in the Alternative, for a More Definite Statement [Doc. No. 11] (the "Motion")
- 3) Memorandum of Points and Authorities in Opposition to Motion to Dismiss Adversary Complaint, or, Alternatively, for a More Definite Statement [Doc. No. 21] (the "Opposition")
 - a) Request for Judicial Notice in Support of Plaintiff's Opposition to Motion to Dismiss Adversary Complaint [Doc. No. 19]
- 4) Defendant's Reply to Opposition of Plaintiff to Defendant's Motion to Dismiss Adversary Proceeding [Doc. No. 25] (the "Reply")

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- 5) Motion to Strike Request for Judicial Notice Filed by Plaintiff Hankey Capital, LLC in Support of Plaintiff's Opposition to Motion to Dismiss Adversary Complaint [Doc. No. 26] (the "Motion to Strike")

I. Facts and Summary of Pleadings

On March 11, 2019, Hankey Capital, LLC (the "Plaintiff") filed a *Complaint for Determination that Debts are Non-Dischargeable and Damages* [Doc. No. 1] (the "Complaint") against Robert Leslie Baillie Quigg (the "Defendant"). The Complaint's allegations are as follows:

At all relevant times, Defendant did business as Quigg. Complaint at ¶ 4. On August 24, 2016, Plaintiff made a loan to Quigg LA 11, LLC ("Quigg 11"), in the original principal amount of \$6.2 million (the "Arden Loan"). *Id.* at ¶ 9. Repayment of the Arden Loan was personally guaranteed by Defendant. *Id.* In making the Arden Loan, Plaintiff relied upon the *Guaranty and Individual Personal Financial Statement* (the "Financial Statement") provided by Defendant. *Id.* at ¶ 10.

On November 17, 2016, Plaintiff made a loan to Quigg LA 11, LLC, in the original principal amount of \$9 million (the "Windsor Loan"). *Id.* at ¶ 11. Plaintiff relied upon the Financial Statement in making the Windsor Loan. *Id.*

On November 30, 2016, without notice to Plaintiff, Defendant caused Quigg 11 and other Quigg entities to seek bankruptcy protection under Chapter 7 of the Bankruptcy Code. *Id.* at ¶ 7.

The Financial Statement that Plaintiff relied upon in connection with the Arden Loan and Windsor Loan was materially false as to Defendant's income, assets, and liabilities. *Id.* at ¶ 14. In addition, when Plaintiff made both loans, Defendant failed to disclose material facts to Plaintiff, including that Defendant would shortly cause Quigg 11 to seek bankruptcy protection. *Id.* at ¶ 18. The failure to disclose such material facts was done with an intent to deceive Plaintiff. *Id.* at ¶ 19. Had Plaintiff known the true facts, he would not have made the loans. *Id.*

Defendant provided Plaintiff with the misleading Financial Statement and failed to disclose material facts for the purpose of inflicting willful and malicious injury upon Defendant. *Id.* at ¶ 23.

Based upon the foregoing allegations, the Complaint seeks to except the indebtedness arising from Defendant's personal guaranty of the loans from Defendant's discharge, pursuant to § 523(a)(2)(A), (a)(2)(B), and (a)(6).

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Summary of Papers Filed in Connection with Defendant's Motion to Dismiss

Defendant moves to dismiss the Complaint, pursuant to Civil Rule 12(b)(6), for failure to state a claim upon which relief can be granted. Defendant argues that the claims for fraud fail to meet the heightened pleading standard imposed by Civil Rule 9(b). According to Defendant, the fraud claims contain no allegations with respect to the false statements made by Defendant and contain no factual allegations supporting Plaintiff's claim that Defendant made false representations with the intent to defraud Plaintiff. Defendant further asserts that the claim under § 523(a)(6) does not allege facts plausibly showing that Plaintiff is entitled to the relief sought. In the event the Court denies Defendant's request for dismissal, Defendant moves for an order requiring Plaintiff to prepare a more definite statement setting forth the specifics regarding the alleged false representations, the specifics regarding the alleged knowledge of falsity, and the specifics regarding the alleged scienter.

Plaintiff opposes the Motion and asserts that the Complaint is adequately pleaded. Plaintiff requests that the Court take judicial notice of the bankruptcy schedules filed by the various Quigg entities. Plaintiff points to the discrepancy between the Quigg entities' equity as set forth in the Financial Statement and the equity set forth in the bankruptcy schedules. This discrepancy, Plaintiff argues, shows that the Financial Statement grossly overstated the equity that the Quigg entities held in various real properties.

In Reply, Defendant asserts that Plaintiff's Opposition consists mainly of Plaintiff arguing its case by relying upon material outside the four corners of the Complaint. Defendant moves to strike Plaintiff's request for judicial notice of the Quigg entities' bankruptcy schedules. Plaintiff opposes Defendant's motion to strike the request for judicial notice, arguing that requests for judicial notice are permissible in deciding motions to dismiss.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

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First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces “does not require ‘detailed factual allegations,’ ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Civil Rule 9(b) provides: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”

The Ninth Circuit has explained the application of Civil Rule 9(b) as follows:

[W]hen averments of fraud are made, the circumstances constituting the alleged fraud “be ‘specific enough to give defendants notice of the particular misconduct ... so that they can defend against the charge and not just deny that they have done anything wrong.’ ” *Bly–Magee*, 236 F.3d at 1019 (quoting *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir.1993)). Averments of fraud must be accompanied by “the who, what, when, where, and how” of the misconduct charged. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir.1997) (internal quotation marks omitted). “[A] plaintiff must set forth *more* than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false.” *Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42 F.3d 1541, 1548 (9th Cir.1994).

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Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003).

The Court declines to take judicial notice of the bankruptcy schedules filed by the Quigg entities, as requested by Plaintiff. It is true that pursuant to Evidence Rule 201, the Court may take judicial notice of the Quigg entities' bankruptcy schedules without converting the motion to dismiss to a motion for summary judgment. *See Rose v. Beverly Health & Rehab. Servs., Inc.*, 356 B.R. 18, 24 (E.D. Cal. 2006), *aff'd sub nom. Rose v. Beverly Health & Rehab. Servs., Inc.*, 295 F. App'x 142 (9th Cir. 2008) (taking judicial notice of bankruptcy court filings in the context of a motion to dismiss). Here, judicial notice is not appropriate, since Plaintiff relies upon the documents he seeks to have the Court judicially notice for the purpose of bolstering the Complaint's allegations. The facts which Plaintiff seeks to have judicially noticed could have been pleaded in the Complaint but were not. A request for judicial notice cannot be used to remedy a Complaint's failure to contain the well-pleaded allegations necessary to state a claim for relief.

The Complaint Fails to State a Claim Under § 523(a)(2)(A)

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To state a § 523(a)(2)(A) claim, a creditor must allege facts with respect to five elements:

- 1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- 2) knowledge of the falsity or deceptiveness of his statement or conduct;
- 3) an intent to deceive;
- 4) justifiable reliance by the creditor on the debtor's statement or conduct;
- and
- 5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000).

The Complaint fails to state a claim under § 523(a)(2)(A). The Complaint alleges that when Defendant induced Plaintiff to extend credit to the Quigg entities on August

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CONT... Robert Leslie Baillie Quigg

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24, 2016 and November 17, 2016, Defendant fraudulently failed to inform Plaintiff that he intended to cause the Quigg entities to seek bankruptcy protection on November 30, 2016.

The Complaint does not allege sufficient facts to support a reasonable inference that Defendant planned to cause the Quigg entities to seek bankruptcy protection at the time of the credit transactions. The Complaint does not, for example, allege facts showing that Defendant knew that the Quigg entities were in a precarious financial position at the time the loans were extended. The Complaint does not specify whether the need for Quigg to seek bankruptcy protection could have reasonably been predicted in advance or whether the bankruptcies were precipitated by unexpected adverse events.

Given the short time between the credit transactions and the bankruptcy filings, it is certainly a possibility that Defendant knew that the Quigg entities would be seeking bankruptcy protection at the time he solicited the loans. However, to state a claim for relief, the Complaint must do more than allege that Defendant obtained credit for the Quigg entities in August and November and caused the Quigg entities to seek bankruptcy protection at the end of November. Businesses seek bankruptcy protection for many different reasons, some of which can reasonably be predicted and others which cannot. Were the Quigg entities otherwise successful businesses that sought bankruptcy protection because a sale to a large client unexpectedly collapsed at the last minute? Or were they failing businesses with years of negative cash flow on the brink of insolvency all along?

Because Plaintiff may have the ability to allege facts stating a claim under § 523(a)(2)(A), dismissal of the claim is with leave to amend.

The Complaint Fails to State a Claim Under § 523(a)(2)(B)

Section 523(a)(2)(B) provides:

A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by ... use of a statement in writing—

- i. that is materially false;
- ii. respecting the debtor's or an insider's financial condition;
- iii. on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

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Robert Leslie Baillie Quigg

Chapter 7

- iv. that the debtor caused to be made or published with intent to deceive.

The Complaint fails to state a claim for relief under § 523(a)(2)(B). The Complaint alleges that the Financial Statement that Defendant provided to Plaintiff was materially false, but does not allege the particulars as to why the financial statement was materially false. When pleading allegations of fraud under § 523(a)(2)(B), the "plaintiff must set forth what is false or misleading about a statement, and why it is false." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Plaintiff provides further allegations as to why the Financial Statement was materially false in opposition to the Motion. Specifically, Plaintiff alleges that the value of the Quigg entities set forth in the Financial Statement was much higher than the value set forth in bankruptcy schedules filed shortly after the Financial Statements were provided. The additional allegations contained in Plaintiff's opposition should have been set forth in the Complaint. Since it appears that Plaintiff has the ability to allege facts stating a claim under § 523(a)(2)(B), dismissal of the § 523(a)(2)(B) claim is with leave to amend.

The Complaint Fails to State a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

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In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under § 523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

The Complaint fails to state a claim under § 523(a)(6). First, the § 523(a)(6) claim is predicated on the § 523(a)(2)(A) and (a)(2)(B) claims, which have not been adequately pleaded. Second, there are no facts alleged supporting a reasonable inference that at the time Defendant solicited the loans, he had a subjective belief that it was substantially certain that harm would be inflicted upon Plaintiff because the Quigg entities would shortly be seeking bankruptcy protection. As discussed above, the Complaint does not allege facts showing that Defendant knew the bankruptcies were imminent at the time of the credit transactions.

Plaintiff may be able to allege facts sufficient to state a claim under § 523(a)(6). Dismissal of the § 523(a)(6) claim is with leave to amend.

Plaintiff shall file a First Amended Complaint by no later than **June 5, 2019**. Upon the filing of the First Amended Complaint, the Clerk of the Court will issue a Summons and Scheduling Order setting forth updated dates governing this action, including the date of a continued Status Conference.

III. Conclusion

Based upon the foregoing, the Complaint is dismissed, but Plaintiff is given leave to amend. A First Amended Complaint shall be filed by no later than **June 5, 2019**.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

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Chapter 7

Defendant(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

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2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#102.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01066. Complaint by Hankey Capital LLC against Robert Leslie Baillie Quigg. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Mitnick, Eric)

FR. 5-14-19

Docket 1

Tentative Ruling:

5/21/2019

See Cal. No. 101, above, incorporated in full by reference.

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Pro Se

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

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11:00 AM

2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#103.00 Hearing
RE: [29] Motion Motion To Strike Request For Judicial Notice Filed By Plaintiff
Hankey Capital, LLC In Support Of Plaintiff's Opposition To Motion To Dismiss
Adversary Complaint

Docket 26

Tentative Ruling:

5/21/2019

See Cal. No. 101, above, incorporated in full by reference.

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 28, 2019

Hearing Room 1568

9:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01512. Complaint by Fred Rosenberg against ROBERT MARK CARPENTER. fraud as fiduciary, embezzlement, larceny)) (Ure, Thomas)

fr. 1-23-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-22-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Thomas B Ure

FRIENDGIFTR, INC

Represented By
Thomas B Ure

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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9:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

Docket 1

***** VACATED *** REASON: CONTINUED 6-24-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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9:00 AM

2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01234. Complaint by Maground, GmbH against Roberto Kai Hegeler. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Barsness, Christopher)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 6-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Pro Se

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness

Trustee(s):

Heide Kurtz (TR)

Pro Se

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9:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01244. Complaint by Pac Anchor Transportation, Inc., consisting of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. against People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California. (Charge To Estate). Nature of Suit: (71 (Injunctive relief - reinstatement of stay)) (Haberbush, David)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 10/17/18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

Defendant(s):

People of the State of California ex

Pro Se

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By

David R Haberbush

Vanessa M Haberbush

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9:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

Adv#: 2:18-01225 Sultan Financial Corporation v. Aaron's, Inc.

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01225. Complaint by Sultan Financial Corporation against Aaron's, Inc.. (Charge To Estate). (Attachments: # 1 Summons and Notice of Status Conference # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (91 (Declaratory judgment)), (72 (Injunctive relief - other)) (Brown, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-15-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield

Defendant(s):

Aaron's, Inc.

Pro Se

Plaintiff(s):

Sultan Financial Corporation

Represented By
Richard G Reinis
Jeffrey N Brown
Julian Brew

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10:00 AM

2:19-12773 Desiree Celia Ramos

Chapter 7

#100.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Jeep Grand Cherokee 1CRJEAG5JC193064 . (Meissner, Alexander)

Docket 8

Tentative Ruling:

5/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Desiree Celia Ramos

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Desiree Celia Ramos

Represented By
Jacqueline D Serrao

Trustee(s):

Jason M Rund (TR)

Pro Se

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10:00 AM

2:19-14988 Renard Gray

Chapter 7

#101.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1706 W Sunset Blvd., Apt 311, Los Angeles, California 90026 . (Bach, Julian)

Docket 7

Tentative Ruling:

5/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on January 17, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Renard Gray

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bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

The Court notes that Debtor's case was dismissed on May 17, 2019 [Doc. No. 9]. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Renard Gray

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se

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10:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.00 HearingRE: [682] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3800 Wailea Alanui Dr., #B101, Kihei, Hawaii . (Weifenbach, Diane)

Docket 682

Tentative Ruling:

5/23/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 682] (the "Motion")
- 2) Opposition to Motion for Relief from Stay of Trinity Financial Services, LLC as to Real Property Located at 3800 Wailea Alunui Dr. #B101, Kihei, HI 96753 [Doc. No. 684] (the "Opposition")
- 3) No Reply in support of the Motion is on file

I. Facts and Summary of Pleadings

Trinity Financial Services, LLC ("Trinity") moves for relief from the automatic stay with respect to property located at 3800 Wailea Alunui Drive, #B101, Kihei, Hawaii 96753 (the "Property"). Claire Levine (the "Debtor") and unsecured creditor Peter Rudinskas (collectively, the "Objectors") oppose the Motion.

A. Background

Debtor filed a voluntary Chapter 11 petition on April 10, 2012. Doc. No. 1. The case was converted to Chapter 7 on July 30, 2012. Doc. No. 78. Prior to conversion, the Hon. Sandra R. Klein presided over the case. Upon conversion to Chapter 7 the case was reassigned to the undersigned Judge.

On October 31, 2012, the Court denied the motion of Capital One, N.A. ("Capital One") for stay-relief with respect to the Property. The denial was as to the bankruptcy estate only and was without prejudice. Doc. No. 129. On February 6, 2014, the Court denied Capital One's renewed motion for stay-relief. Doc. Nos. 270 and 272.

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Claire Levine

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On January 11, 2019, the Chapter 7 Trustee (the "Trustee") filed a notice stating that he intended to abandon the Property. Doc. No. 669 (the "Notice of Abandonment"). On January 14, 2019, the Trustee withdrew the Notice of Abandonment. Doc. No. 670.

On March 5, 2019, over the opposition of the Objectors, the Court granted U.S. Bank's motion for stay relief with respect to the Property. Doc. Nos. 678 and 680.

B. Summary of Papers Filed in Connection with the Motion

Trinity seeks stay relief pursuant to § 362(d)(1) and (d)(2), and makes the following arguments in support of the Motion:

- 1) On March 5, 2019, the Court granted a motion for stay relief brought by U.S. Bank, the senior lienholder. The Court found that there was no equity in the Property. The Objectors are collaterally estopped from challenging this finding.
- 2) The Debtor received a discharge on September 10, 2015. No automatic stay is in effect as to the Debtor. The Trustee did not oppose the stay relief motion brought by U.S. Bank, indicating that the Trustee has no intent to administer the Property. Since the Property is not being administered, allowing the stay to remain in effect would serve no purpose.

Objectors make the following arguments in their Opposition to the Motion:

- 1) Trinity lacks a colorable interest in the Property. The assignment of the Note and Mortgage to Trinity was not notarized in accordance with the requirements of Hawaii law.
- 2) PNC Bank, N.A., Trinity's predecessor-in-interest, informed Debtor that the indebtedness asserted by Trinity was forgiven. Trinity has not supplied admissible evidence in support of its contention that it is owed \$744,574.56.

II. Findings and Conclusions

Civil Rule 17(a)(1) provides: "An action must be prosecuted in the name of the real party in interest." "The modern function of the rule ... is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata." *U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1039 (9th Cir. 1986). "Real party in interest

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CONT... Claire Levine

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doctrine ... ensures that the party bringing the action owns or has rights that can be vindicated by proving the elements of the claim for relief asserted." *Veal v. Am. Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 908 (B.A.P. 9th Cir. 2011). Because stay-relief proceedings "are primarily procedural" and do not finally determine a creditor's claim or security, "a party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." *Veal*, 450 B.R. at 914–15; *see also Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are ... handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing").

For purposes of the instant Motion only, Trinity has shown that it is the real party in interest entitled to enforce the Note and Mortgage. This finding is based upon the declaration of Dan A. Madden, III, which establishes that Trinity has possession of the Note. Madden Decl. [Doc. No. 682] at ¶ 3.a and Ex. 2.

The Objectors assert that Trinity failed to record its assignment of the Note and Mortgage in accordance with Hawaii law, and that consequently Trinity lacks standing to seek stay relief. The Objectors misapprehend the nature of a lift-stay motion. To show that it is the real party in interest entitled to stay-relief, Trinity need establish only a colorable claim to enforce the Note and Mortgage. That is because this-lift stay hearing is not an adjudication of Trinity's ultimate ability to foreclose under the Note and Mortgage. That issue will be determined by the Hawaii State Court. Mr. Madden's declaration establishes that Trinity has a colorable claim to enforce rights against the Property.

The Objectors contend that Trinity lacks standing to seek stay relief on the ground that the indebtedness associated with the Note and Mortgage was forgiven by Trinity's predecessor-in-interest. According to Mr. Madden's declaration, the Debtor owes \$744,574.56 under the Note. The Court finds that Mr. Madden's declaration establishes that Trinity has a sufficient interest in the Property to give it standing to seek stay relief. It is not necessary for the Court to determine the exact amount owed under the Note for purposes of this Motion, because as further discussed below, there is no equity in the Property regardless of how much Trinity is owed. Nothing in this ruling prevents the Debtor from challenging the amount of the indebtedness asserted by Trinity before the State Court.

On February 19, 2019, in connection with a stay relief motion brought by senior lienholder U.S. Bank, the Court found that the Property was worth \$6.1 million but

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10:00 AM

CONT... Claire Levine

Chapter 7

that U.S. Bank was owed approximately \$8.35 million. The Objectors have not presented any evidence showing that this finding was in error. Because the Property's value is less than the amount owed to senior lienholder U.S. Bank, there is no equity in the Property regardless of how much Trinity is owed. The Motion is GRANTED pursuant to §§ 362(d)(1) and (d)(2), to permit Trinity, its successors, transferees, and assigns, to enforce its remedies with respect to the Property in accordance with applicable law. Trinity may not pursue any deficiency claim against the Debtors or the estate except by filing a proof of claim pursuant to § 501. Because the Motion was opposed, the fourteen day stay provided by Bankruptcy Rule 4001(a)(3) shall remain in effect.

Stay relief is further supported by the lack of opposition from the Trustee. The Trustee did not oppose U.S. Bank's motion for stay relief and has not opposed this Motion. There is no indication that the Trustee intends to administer the Property for the benefit of the estate. This bankruptcy petition was commenced on April 10, 2012. The Property has been protected by the automatic stay for almost seven years. The automatic stay as to the Debtor terminated on September 10, 2015, when the Debtor received a discharge. *See* § 362(c)(2)(C). Allowing the stay to remain in place would be justified only if the Trustee intended to administer the Property. Since that is not the case, stay relief is appropriate.

Trinity shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E McGoldrick
Thomas M Geher
Stella A Havkin

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CONT... Claire Levine

Chapter 7

Peter J Rudinskas

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

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Monday, June 3, 2019

Hearing Room 1568

10:00 AM

2:19-14365 Alen Bagdasaryan and Liana Martirosyan

Chapter 7

#1.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Ford F150 VIN 1FTEW1CG9HFB89601 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

5/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Alen Bagdasaryan and Liana Martirosyan

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alen Bagdasaryan

Represented By
Khachik Akhkashian

Joint Debtor(s):

Liana Martirosyan

Represented By
Khachik Akhkashian

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Monday, June 3, 2019

Hearing Room 1568

10:00 AM

2:19-14796 Robin Lynn Ingram

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1518 W. 84th Street, Apt. 3, Los Angeles, CA 90047 .

Docket 9

Tentative Ruling:

5/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on February 6, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Robin Lynn Ingram

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bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. Movant's request for annulment is denied for lack of cause shown. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Robin Lynn Ingram

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [67] Motion For Summary Judgment as to First Claim for Relief in Plaintiff's
Complaint (Hilton, Lawrence)

Docket 67

***** VACATED *** REASON: CONTINUED 8-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By
Kelvin J Lo

Lea Young Lee, an individual

Represented By

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CONT... JW Wireless Inc.

Chapter 7

Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:19-01077 Sharp v. Wright et al

#2.00 HearingRE: [19] Motion for Default Judgment Under LBR 7055-1 (Greenwood, Gail)

Docket 19

Tentative Ruling:

6/3/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion for Default Judgment Under LBR 7055-1 [Doc. No. 19] (the "Motion")
 - a) Notice of Hearing [Doc. No. 20]
- 2) No opposition to Motion is on file

I. Facts and Summary of Pleadings

On March 21, 2019, Bradley D. Sharp, the Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 for Liberty Asset Management Corporation (the "Plan Administrator") filed a *Complaint to Determine Nature, Extent, and Validity of Lien* [Doc. No. 1] (the "Complaint") against Merle D. Wright, Patricia S. Wright, and Bradford W. Wright, executor on behalf of Jeanne W. Carlson (the "Defendants").

In August 2018, the Court approved the Plan Administrator's sale of a parcel of vacant land located in the City of Duarte, County of Los Angeles, APN 8602-018-005 (the "Duarte Property"). The sale was free and clear of a lien that was recorded against the Duarte Property on January 27, 1967, to secure payment of \$15,300 to Los Angeles Development Company (the "Alleged Lien"). After it was recorded, the Alleged Lien was assigned to the Defendants.

The Complaint alleges that the Alleged Lien was satisfied but that a reconveyance was never recorded. In the alternative, the Complaint alleges that the Alleged Lien merged with the fee ownership of the Duarte Property in 1994, when the Defendants acquired title to the Duarte Property such that any lien in favor of the Defendants was eliminated. The Complaint seeks a declaration that the Alleged Lien is invalid and of no force and effect.

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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

On May 3, 2019, the Clerk of the Court entered default against the Defendants. The Plan Administrator now moves for entry of default judgment. The Motion is supported by e-mail correspondence between the Plan Administrator and Defendant Bradford W. Wright, in which Mr. Wright states that he and the other Defendants waive any rights against the sales proceeds of the Duarte Property.

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). The Complaint establishes that the Allege Lien was satisfied but that a reconveyance was never recorded; or in the alternative, that the Alleged Lien was eliminated after merging with Defendants' fee simple interest in the Duarte Property. In either case, the Plan Administrator is entitled to a declaration that the Alleged Lien is invalid and of no force and effect.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Plan Administrator shall submit a conforming judgment, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

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CONT... Liberty Asset Management Corporation

Chapter 11

Raphael Cung

Defendant(s):

Merle D Wright Pro Se

Patricia S Wright Pro Se

Bradford W Wright Pro Se

Plaintiff(s):

Bradley Sharp Represented By
Gail S Greenwood

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2:19-15272 Trisha L. Hanson

Chapter 7

#3.00 HearingRE: [7] Motion to compel trustee to abandon interest in property of estate /Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts); Declarations of Pardis Akhavan and Trisha L. Hanson in Support Thereof (with Proof of Service)

Docket 7

Tentative Ruling:

6/3/2019

For the reasons set forth below, CONTINUE HEARING to June 18, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts) [Doc. No. 7] (the "Motion to Compel Abandonment")
2. Notice of Motion for Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts) [Doc. No. 8]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Trisha L. Hanson (the "Debtor") filed this voluntary chapter 7 case on May 6, 2019 (the "Petition Date"). Shortly thereafter Timothy Yoo was appointed and continues to serve as the acting chapter 7 trustee (the "Trustee").

The Debtor now moves pursuant to § 554(b) for an order compelling the Trustee to abandon the estate's interest in approximately \$7,615.65 in funds being held in four bank accounts held in the Debtor and her minor daughter's names at Wells Fargo, bearing account numbers ending in 8457, 6478, 8431 and 6854 (collectively, the "Bank Accounts"), which are presently frozen. **[Note 1]** The Debtor asserts that cause exists to compel abandonment of the Bank Accounts because she properly disclosed the Bank Accounts on Schedule B and claimed them fully exempt on Schedule C. Accordingly, the Debtor argues that the Bank Accounts are of inconsequential value

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CONT...

Trisha L. Hanson

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to the bankruptcy estate and the Trustee should be compelled to abandon the Bank Accounts because the Debtor needs the funds for the ongoing care of her three minor children and herself.

The Debtor states that she attempted to informally resolve the situation with the Trustee prior to filing the Motion to Compel Abandonment by requesting that the Trustee instruct Wells Fargo to release the funds. However, the Debtor understand that the Trustee is unwilling to release the funds until after the initial § 341(a) Meeting of Creditors, which is presently scheduled for June 13, 2019. Therefore, the Debtor brought this motion due to the extreme hardship that her family will suffer without more immediate access to these funds.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 554(b) states:

On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. 554(b).

In this case, the Debtor argues that there is no equity in the Bank Accounts because she claimed them fully exempt and, as a result, the Bank Accounts are of inconsequential value and must be abandoned. While the Court is sympathetic to the Debtor's financial hardships, the Court nevertheless believes that it is premature for the Court to be able to determine that the Bank Accounts are of inconsequential value because the deadline to object to the Debtor's exemptions has not yet run.

Pursuant to Bankruptcy Rule 4003(b), the deadline to object to a claimed exemption is the later of thirty days after the meeting of creditors held under § 341(a) is concluded or within thirty days after any amendment to the list of supplemental schedules is filed. In this case, that would make the deadline no earlier than July 13, 2019. Fed. R. Bankr. P. 4003(b).

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CONT... Trisha L. Hanson

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However, in view of the exigencies identified by the Debtor in obtaining access to the funds in the Bank Account, the Court is inclined to (1) continue this matter to **June 18, 2019 at 10:00 a.m.**, to allow time for the Trustee to examine the Debtor at the § 341(a) Meeting of Creditors, and (2) direct the Trustee to file a response to the Motion to Compel Abandonment setting forth his position regarding the allowability of the Debtor's claimed exemptions in the Bank Accounts by no later than **noon on June 17, 2019**.

III. Conclusion

For the reasons set forth above, the matter is CONTINUED to June 18, 2019 at 10:00 a.m.

The Debtor is directed to give notice to the Trustee and other interested parties and file a proof of service evidencing the same by no later than June 6, 2019.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor states the account ending in 8431 is held jointly in the name of the Debtor and her minor daughter. The Debtor also identifies a fifth bank account, ending in 2144, which the Debtor states is also held jointly in the name of the Debtor and her daughter, but the Debtor does not appear to be seeking an order compelling the Trustee's abandonment of this account.

Party Information

Debtor(s):

Trisha L. Hanson

Represented By
Matthew D. Resnik

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Trustee(s):

Timothy Yoo (TR)

Pro Se

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10:00 AM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#4.00 HearingRE: [114] Application for Compensation for Accountant Jennifer Min Liu for Michael Jay Berger, Accountant, Period: 3/1/2018 to 4/15/2019, Fee: \$7,284.00, Expenses: \$.

Docket 114

Tentative Ruling:

6/3/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$9,152 [Applicant's request for \$132 in fees for time spent on April 19, 2018 (.5), April 23, 2018 (.2), and April 24, 2018 (.5) is denied because those services were performed before the April 25, 2018 effectiveness of Applicant's employment. *See* Doc. No. 63].

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

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Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#5.00 HearingRE: [111] Application for Compensation Second Amended Application for Compensation of Fees and Reimbursement of Expenses for Michael Jay Berger, Debtor's Attorney, Period: 6/16/2018 to 4/30/2019, Fee: \$15,800.50, Expenses: \$2,931.49.

Docket 111

Tentative Ruling:

6/3/2019

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,800.50

Expenses: \$441.52

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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11:00 AM

2:17-14364 Silla Automotive, LLC

Chapter 7

#100.00 HearingRE: [168] Motion RE: Objection to Claim Number 29 by Claimant Pisheng Auto Parts Industries Ningbo Co Ltd. Notice of Trustee's Objection and Objection to Claim of Pisheng Auto Parts Industries Ningbo Co Ltd; Memorandum of Points and Authorities, Request for Judicial Notice Declaration of Richard K. Diamond, and Declaration of Zev Shechtman in Support Thereof with Proof of Service (Shechtman, Zev)

Docket 168

Tentative Ruling:

6/3/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and the Claim is DISALLOWED in full.

Pleadings Filed and Reviewed

1. Notice of Trustee's Objection and Objection to Claim of Pisheng Auto Parts Industries Ningbo Co Ltd [Doc. No. 168] (the "Claim Objection")
2. Notice of Objection to Claim [Doc. No. 169]
3. Supplemental Proof of Service Re: Notice of Trustee's Objection and Objection to Claim of Pisheng Auto Parts [Doc. No. 171]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Silla Automotive, LLC (the "Debtor") filed this voluntary chapter 7 case on April 10, 2017 (the "Petition Date"). Shortly thereafter, Richard K. Diamond was appointed to serve as the chapter 7 trustee (the "Trustee") and continues to serve in that capacity. On April 28, 2017, the Trustee filed a "Notice of Possible Dividend and Order Fixing Time to File Claims," which set August 1, 2017 as the deadline for creditors to file timely proofs of claim (the "Claims Bar Date") [Doc. No. 14-1].

On July 25, 2017, Pisheng Auto Parts Industries Ningbo Co. Ltd. ("Claimant") filed Proof of Claim No. 29 (the "Claim") asserting an unsecured claim for \$6,031,888.91 for "Goods sold." In support of the Claim, Claimant attached

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CONT... Silla Automotive, LLC

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approximately 17 pages of what appears to be a list of past orders (the "Printout").

Summary of Claim Objection

The Trustee filed a timely objection seeking an order disallowing the Claim in its entirety on the grounds that Claimant failed to submit adequate evidence in support of the Claim. The Trustee highlights the limited information provided in support of the Claim and notes that there is no explanation for what the 17-page Printout is, who prepared the document and what it represents. The Trustee further argues that there is no evidence that any contract ever existed between the Debtor and Claimant or that there was ever any actual sale that created the alleged liability. The Trustee also argues that even if the Printout could be construed as a contract (or if some oral contract existed), the vast majority of the debt was incurred beyond applicable two- and four-year statutes of limitation and would therefore be time-barred.

The Trustee states that on March 28, 2019, he sent a letter to Claimant asking a number of questions about the Claim and requesting additional documentation, but has not received any response. Therefore, the Trustee contends that the evidence supplied in support of the Claim is inadequate to meet the minimum threshold of validity under FRBP 3001 and should be disallowed in its entirety.

Alternatively, the Trustee argues that the Claim should be recharacterized as an equity claim.

The Trustee makes the following arguments in support of this relief:

- The Debtor was in the business of selling automotive parts prior to its bankruptcy filing.
- The individual who signed the Debtor's petition was Tom Hseun ("Hseun"), the Debtor's manager.
- The Debtor scheduled Claimant's Claim in the amount of \$6,260,288 and also listed Claimant as the owner of 100% equity interest in the Debtor.
- The entire creditor body of 39 filed claims totals approximately \$6,600,000. Therefore, the Claim constitutes approximately 90% of the entire creditor body.
- Hseun is also the president of Claimant.
- Based on representations of the Debtor and Claimant, the Trustee is informed

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CONT...

Silla Automotive, LLC

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and believes that:

- Claimant is the parent company of the Debtor.
- Claimant provided the Debtor with its inventory.
- Claimant is a foreign entity and did business in the United States through the Debtor.
- Claimant was in control of the Debtor at all relevant times.
- Claimant and the Debtor had and have the same principal.
- Claimant appears to allege that it sold a large quantity of goods to the Debtor for which it claims it is entitled to payment.

Based on the foregoing, the Trustee argues that Claimant's true intent at the time it made the transfers was for the transfers to be equity contributions and not sales transactions. The Trustee relies on *In re Daewoo Motor Am. Inc.*, 2010 WL 7715192, at *11 (Bankr. C.D. Cal. July 6, 2010), *aff'd* 471 B.R. 721 (C.D. Cal. 2012), *aff'd* 554 F. App'x 638 (9th Cir. 2014), in support of his argument that most of the factors courts consider in making a recharacterization determination are satisfied in this case. Specifically, the Trustee asserts that:

- There is no documentation provided evidencing any contractual deadlines for payment.
- There is no evidence of any interest applied, or even a contract.
- There is no clarity regarding the source or extent of any repayment throughout the history of the relationship between the parties.
- The extent of debt and the fact that the Debtor only had \$27,138.80 in cash as of the petition date suggests that the Debtor was massively under-capitalized.
- Claimant is the 100% owner of the Debtor and Claimant's president is also the Debtor's manager.
- Notwithstanding the extent of debt, there is no evidence of security or even an agreement between the parties which would be unlikely if this were an arm's length situation.
- It appears that the Debtor's inventory was its only product and supplied directly by Claimant.

The Trustee again highlights that despite his request for information to better explain the relationship between Claimant and the Debtor, he has received no response. Accordingly, the Trustee contends that the record supports a finding that

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the parties' relationship was one of equity and not debt and the Claim should be recharacterized as equity.

Finally, and in the alternative, the Trustee requests that the Court issue an order equitably subordinating the Claim pursuant to § 510(c)(1). The Trustee argues that Claimant was not an arm's-length supplier of the Debtor's but instead used the Debtor as a domestic arm and distribution center. The Trustee further argues that the Debtor was undercapitalized and received inventory from Claimant far in excess of any reasonable amount that a supplier would have provided if this were an arm's-length relationship. Additionally, the Trustee argues that non-insider creditors did not have the same advantage as Claimant regarding the Debtor's financial affairs and that Claimant caused the Debtor to incur its non-insider debt. Therefore, the Trustee asserts that the Claim should be equitably subordinated because it would be unfair to non-insider general unsecured creditors if the vast majority of the approximately \$198,000 in funds on hand are distributed to Claimant in view of its relationship and control over the Debtor.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the *prima facie* validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299-301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a

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preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.*

In this case, the Court agrees with the Trustee that the Claim is not entitled to *prima facie* validity because it does not comply with Rule 3001(c)(1) which required Claimant to attach the contract or agreement that gives rise to its right to payment. *See* Fed. R. Bankr. P. 3001(c)(1) ("...when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim").

Furthermore, even if the Court were to find that the Claim should be afforded *prima facie* validity, the Trustee has rebutted that presumption by providing "facts tending to defeat the claim." First, the Trustee asserts that Claimant's failure to provide additional information or documentation regarding the existence of a contract raises questions about whether the debts identified in the Claim are valid and enforceable debts against the Debtor under California law. Second, the Trustee highlights that the "Return Status" column and the "Received" notation under the "Remarks" column raise questions about whether the Debtor owes any debt for the amounts listed in those respective columns. Third, the Trustee challenges the validity and existence of any debt on statute of limitations grounds.

Claimant's failure to respond to the Trustee's request for information also raises an appropriate evidentiary basis to object to the Claim. It is widely accepted that "creditors have an obligation to respond to formal or informal requests for information [about a proof of claim] . . . [which] applies regardless whether Creditors have met their obligations to provide a summary under Rule 3001(c)." *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 436 (B.A.P. 9th Cir. 2005). "If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim." *Id.* at 437.

Any one of these challenges provides a sufficient basis to shift the burden to Claimant to present facts or evidence that provide the validity of the Claim by a preponderance of the evidence. However, Claimant has failed to carry its burden of

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proof because, as of the preparation of this tentative ruling, Claimant has not filed a response or opposition. Therefore, the Court finds it appropriate to disallow the Claim in its entirety.

In view of the Court's ruling above, the Trustee's request for an order recharacterizing the debt or equitably subordinating the Claim are denied as moot.

III. Conclusion

For the reasons set forth above, the Claim Objection is SUSTAINED and the Claim is DISALLOWED in full.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

Trustee(s):

Richard K Diamond (TR)

Represented By
Howard Kollitz
Zev Shechtman
Sonia Singh

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2:19-13797 Liboria Zavalza

Chapter 11

#101.00 Hearing
RE: [15] Motion for Setting Property Value Re: 4053 & 4053A Randolph Street,
Huntington Park, CA 90255 (Lindsey, Crystle)

Docket 15

***** VACATED *** REASON: CONTINUED 8-14-19 AT 11:00 A.M.**

Tentative Ruling:

6/3/2019

For the reasons set forth below, CONTINUE HEARING to August 14, 2019 at 11:00 a.m.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 15] (the "Valuation Motion")
2. Opposition to Debtor's Motion for Order Determining Value of Collateral [Doc. No. 21] (the "Opposition")
3. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Liboria Zavalza (the "Debtor") filed this voluntary chapter 11 case on April 3, 2019 (the "Petition Date"). The Debtor now seeks an order determining the value of real property located at 4053 & 4053(A) Randolph Street, Huntington Park, CA 90255 (the "Property") pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure. The Property is encumbered by a lien in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2007-3 (the "Bank") in the amount of \$1,185,616.25.

The Debtor seeks a determination that the value of the Property is \$460,000 as of April 9, 2019 and requests that the Court make a finding that, for purposes of plan treatment under § 1129, the Bank holds a secured claim in the amount of \$460,000 and an unsecured claim in the amount of \$725,616.25. In support of the \$460,000

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valuation, the Debtor attached a certified appraisal.

Ocwen Loan Servicing, LLC, the authorized loan servicing agent for the Bank (together, "Creditor"), filed a timely opposition requesting at least a 60-day continuance to afford it an opportunity to obtain a verified full interior appraisal. Credit asserts that it recently obtained a Broker's Price Opinion, dated February 26, 2019, that values the Property at \$538,000. Opposition, Ex. A. Accordingly, Creditor believes there may be significantly more equity in the Property than alleged by the Debtor.

As of the preparation of this tentative ruling, no reply is on file.

Based on the foregoing, this matter is CONTINUED to **August 14, 2019 at 11:00 a.m.** The Debtor is directed to cooperate with Creditor to arrange for a mutually agreeable date to conduct an interior appraisal.

The deadline for Creditor to submit a supplemental declaration and appraisal is **July 31, 2019**. The Debtor shall have until no later than **August 7, 2019** to file a supplemental reply in response thereto.

Creditor is directed to lodge a scheduling order consistent with this tentative ruling within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron
Crystle Jane Lindsey

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#102.00 HearingRE: [17] Motion to Use Cash Collateral Re: 4053 & 4053A Randolph Street, Huntinton Park, CA 90255

Docket 17

Tentative Ruling:

6/3/2019

For the reasons set forth below, the Court GRANTS the Cash Collateral Motion on an interim basis. The Debtor is authorized to use the cash collateral on an interim basis through and including August 21, 2019. The Debtor shall make monthly adequate protection payments to the Bank in the amount of \$1,049.49 as set forth in the proposed budget. The Court will conduct a further hearing on the use of cash collateral on **August 28, 2019, at 11:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **August 14, 2019**. Any opposition to the continued use of cash collateral must be submitted by no later than **August 21, 2019**.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 17] (the "Cash Collateral Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Liboria Zavalza (the "Debtor") filed this voluntary chapter 11 case on April 3, 2019 (the "Petition Date"). On Schedule A, the Debtor listed an ownership interest in a duplex located at 4053 & 4501(A) Raldolph [Note 1] Street, Huntington Park, CA 90255 (the "Property"). The Debtor rents out both units and collects monthly rental income totaling \$2,150 from the Property. The Property is subject to a first-priority deed of trust in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2007-3 (the "Bank") in the amount of \$1,185,616.25.

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The Debtor seeks an order authorizing the Debtor to use cash collateral in accordance with the terms of the Proposed Monthly Budget (the "Budget") appearing on page 5 of the Cash Collateral Motion. The Budget provides for the following expenses to be paid for with the Bank's cash collateral:

Income:	\$2,150.00
Expenses:	
The Bank	(\$1,049.49)
Property Taxes	(\$960.00)
Property Insurance	(\$140.51)
Net Income:	\$0.00

The Debtor states that she has posted an ad seeking to rent an additional room in the Property for \$1,450/month and that once she secures a tenant she will increase monthly adequate protection payments to the Bank to \$2,469. In support of the Cash Collateral Motion the Debtor attached copies of current lease agreements for both units as well as proof of monthly insurance and property tax expenses.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S.

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365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Here, the Court finds that the terms of the Cash Collateral Motion and the Budget comply with § 363. The Debtor's use of cash collateral is necessary to preserve the Property and to facilitate the Debtor's reorganization efforts. The Court finds that the Bank's interest in the Property is adequately protected because there is no evidence in the record to suggest that the Property is declining in value and because the Debtor has proposed to make monthly adequate protection payments in the amount of \$1,049.49 (with the possibility of an increase to \$2,469).

III. Conclusion

For the reasons set forth above, the Court GRANTS the Cash Collateral Motion on an interim basis. The Debtor is authorized to use the cash collateral on an interim basis through and including August 21, 2019. The Debtor shall make monthly adequate protection payments to the Bank in the amount of \$1,049.49 as set forth in the proposed budget. The Court will conduct a further hearing on the use of cash collateral on **August 28, 2019, at 11:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **August 14, 2019**. Any opposition to the continued use of cash collateral must be submitted by no later than **August 21, 2019**.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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Note 1: The Court believes this spelling is in error and that the correct street name is Randolph Street as set forth in the Cash Collateral Motion.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron
Crystle Jane Lindsey

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2:18-22144 Hakop Jack Aivazian

Chapter 7

#103.00 Hearing
RE: [61] Motion to Reconsider (related documents 49 Order on Motion to
disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee (BNC-
PDF))

Docket 61

***** VACATED *** REASON: CONTINUED 6-18-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:03-30563 Hugo Pimienta

Chapter 7

Adv#: 2:04-01337 Jacuzzi et al v. Pimienta

- #1.00** HearingRE: [80] Motion to vacate order/ Notice of Motion and Motion to Vacate Judgment; Memorandum of Points and Authorities; Declaration of Hugo E Pimienta; Additional attachment(s) added on 4/30/2019 (Evangelista, Maria). Additional attachment(s) added on 4/30/2019 (Evangelista, Maria).

Docket 80

Tentative Ruling:

6/4/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Vacate Judgment [Doc. No. 80] (the "Motion")
- 2) Plaintiffs' Response to Debtor's Notice of Motion and Motion to Vacate Judgment [Doc. No. 88] (the "Opposition")
- 3) Reply to Plaintiffs' Response to Debtor's Notice of Motion and Motion to Vacate Judgment [Doc. No. 89] (the "Reply")

I. Facts and Summary of Pleadings

Hugo Pimienta (the "Debtor") moves to vacate a stipulated non-dischargeability judgment entered against him on January 4, 2006. To provide necessary context for the issues raised by the Motion, the Court sets forth a detailed description of previous events in the Debtor's bankruptcy case and in the related bankruptcy case of the Debtor's father, Enrique Pimienta.

A. Background

Hugo Pimienta (the "Debtor") filed a voluntary Chapter 7 petition on August 5, 2003. On January 30, 2004, John Jacuzzi, Sr., Margarita Jacuzzi, John Jacuzzi, Jr., James Jacuzzi, and Patricia Jacuzzi (collectively, the "Jacuzzis") filed a complaint against the Debtor, asserting claims under §§ 523(a) and 727(a) (the "Dischargeability Complaint"). On January 4, 2006, the Court entered a stipulated judgment in favor of the Jacuzzis (the "Stipulated Judgment"). The Stipulated Judgment provided that

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Debtor was indebted to the Jacuzzis in the amount of \$11,906,870.41, and that such indebtedness was excepted from the Debtor's discharge pursuant to § 523(a). The Stipulated Judgment assigned the Jacuzzis' § 727(a) claims to the Chapter 7 Trustee (the "Trustee").

On May 10, 2002, John B. Jacuzzi filed a fraud complaint with the Mexican Attorney General in Mexico City, Mexico against the Debtor, Enrique Pimienta, and Arturo Pimienta (the "Mexican Fraud Complaint"). The filing of the Mexican Fraud Complaint led to the opening of a criminal investigation. The Jacuzzis provided affidavits in support of the Mexican Fraud Complaint.

On April 17, 2008, the Debtor was incarcerated by Mexican authorities as a result of the Mexican Fraud Complaint. Litigation concerning the Debtor's incarceration took place in the Chapter 7 bankruptcy case of the Debtor's father, Enrique Pimienta, filed in the Bankruptcy Court for the Southern District of Texas, Houston Division (the "Texas Bankruptcy Court"). On August 15, 2008, the Texas Bankruptcy Court issued an order directing the Jacuzzis to (1) immediately dismiss the Mexican Fraud Complaint, (2) immediately obtain the release of the Debtor from imprisonment in Monterrey, Mexico, and (3) immediately obtain the release of Enrique [Note 1] from the custody of the U.S. Marshal. Doc. No. 172, Case No. 05-30565. On February 23, 2009, the Texas Bankruptcy Court issued an order holding the Jacuzzis in contempt for failure to comply with the prior order. Doc. No. 200, Case No. 05-30565. On April 23, 2010, the Texas Bankruptcy Court issued a final contempt judgment against the Jacuzzis and in favor of Enrique and the Debtor. Doc. No. 239, Case No. 05-30565 (the "Final Judgment"). The Final Judgment provided that Enrique and the Debtor were entitled to recover \$2,175,000 from the Jacuzzis, in addition to \$5,000 per day from the Jacuzzis for each day after April 14, 2010, until the Jacuzzis purged themselves of contempt.

On July 26, 2011, the Jacuzzis filed an action in the United States District Court for the Southern District of Texas (the "Texas District Court"). The Jacuzzis asserted that the Final Judgment was void, arguing that the Texas Bankruptcy Court lacked personal jurisdiction because the Jacuzzis were not properly served under the Hague Convention. On October 12, 2012, the Texas District Court concluded that the Final Judgment was void for lack of personal jurisdiction. Doc. No. 36, Case No. 1:11-cv-00153. On September 27, 2013, the Texas District Court reversed its prior order and dismissed the action without prejudice, finding that it lacked subject matter jurisdiction. Doc. No. 36, Case No. 1:11-cv-00153. On August 5, 2014, the Fifth Circuit reversed the Texas District Court's determination that it lacked subject matter

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jurisdiction and remanded the case for further proceedings. *Jacuzzi v. Pimienta*, 762 F.3d 419 (5th Cir. 2014). On September 18, 2015, the Texas District Court entered summary judgment in favor of the Jacuzzis. The Texas District Court found that the Final Judgment against the Jacuzzis entered by the Texas Bankruptcy Court was void for lack of personal jurisdiction. Doc. No. 75, Case No. 1:11-cv-00153.

B. Summary of Debtor's Motion to Vacate the Stipulated Judgment

The Debtor, proceeding *in pro se*, moves to vacate the Stipulated Judgment, pursuant to Civil Rule 60(b)(3), (b)(5), (b)(6), and (d)(3). The Debtor makes the following arguments and representations in support of the Motion:

- 1) After obtaining the Stipulated Judgment, the Plaintiffs continued to pursue the Mexican Fraud Complaint, which resulted in the Debtor being imprisoned for five years and eight months. Plaintiffs' pursuit of the Mexican Fraud Complaint was improper because the Plaintiffs had assigned their claims against the Debtor to the Trustee. The Mexican Fraud Complaint was based upon the same allegations as the Dischargeability Complaint.
- 2) While in prison, the Debtor was tortured by a criminal group. Members of the criminal group did not mention the Jacuzzis by name, but told the Debtor that "we are here to make you pay what you owe and to collect our commission on the collection." Debtor's Decl. at ¶ 23.
- 3) In Mexico, Plaintiffs obtained a judgment against the Debtor in the amount of \$8,382,517.80. This judgment was effectively a duplicate of the Stipulated Judgment.
- 4) The Debtor's imprisonment in Mexico violated the discharge injunction.

C. Summary of the Jacuzzis' Opposition to the Motion

The Jacuzzis make the following arguments and representations in Opposition to the Motion:

- 1) The Motion should be denied because the Debtor agreed to entry of the Stipulated Judgment. The Stipulated Judgment was not obtained as a result of fraud, misrepresentation, or misconduct. The gravamen of the Motion is that the Debtor's incarceration in Mexico for crimes he committed against the Jacuzzis and others should somehow relieve him of the effect of the Stipulated Judgment. Serving jail time in Mexico for the commission of crimes does not

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satisfy or release the non-dischargeable Stipulated Judgment.

- 2) The exhibits submitted in support of the Motion should be stricken because they are not authenticated and contain inadmissible hearsay.

D. Summary of the Debtor's Reply in Support of the Motion

The Debtor makes the following arguments and representations in his Reply in support of the Motion:

- 1) The Jacuzzis' Opposition should not be considered because it was not filed timely.
- 2) The Jacuzzis incorrectly state that the Stipulated Judgment was not obtained as a result of fraud, misrepresentation, or misconduct. To induce Debtor to execute the Stipulated Judgment, the Jacuzzis represented through their attorney that after entry of the Stipulated Judgment, they would not interfere with the Debtor's new business ventures. Instead of fulfilling this promise, the Jacuzzis took action to cause the Debtor to be incarcerated.

II. Findings and Conclusions

A. Evidentiary Rulings

In support of the Motion, the Debtor submits documents filed in connection with the Mexican Fraud Complaint (Exhibits 3–11). All the documents are in Spanish and have not been translated. The Debtor states that Exhibit 3 is a resolution issued by a Mexican Court and that Exhibits 4–11 are depositions of members of the Jacuzzi family. The Jacuzzis object to Exhibits 3–11 on the grounds that they are unauthenticated and contain inadmissible hearsay.

The Court declines to admit Exhibits 3–11 because they are not relevant to the issues presented by the Motion. As discussed in Section II.B.3., below, the Debtor is not entitled to relief from the Stipulated Judgment even assuming that the Motion's allegations are true. Therefore, it is not necessary for the Court to determine the truthfulness of the facts which the Debtor attempts to substantiate through the Exhibits.

Exhibit 13 is a brief filed on behalf of Enrique Pimienta before the Fifth Circuit. The Court will admit Exhibit 13, as it provides context for the issues adjudicated herein. However, the Court emphasizes that Exhibit 13 is of limited relevance.

Exhibit 14 is a table prepared by the Debtor setting forth a chronology of litigation in the Debtor's bankruptcy, the bankruptcies of his family members, and the action

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filed by the Jacuzzis in the Texas District Court. The Court will admit Exhibit 14. However, the Court relies upon the official court records themselves to establish the chronology of events, rather than the Exhibit 14.

Exhibit 2 is a letter from John Jacuzzi to W. Steve Smith, the Trustee of Enrique's bankruptcy estate. The Court declines to admit Exhibit 2, as it has not been properly authenticated. Evidence Rule 901(a) provides that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the items is what the proponent claims it is." The Debtor describes the letter in his declaration in support of the Motion, but does not explain how he acquired the letter. The Debtor is not the author of or recipient of the letter. Under these circumstances, to properly authenticate the letter, the Debtor was required to supply some explanation of how he obtained the letter.

B. The Motion is Denied

At the outset, the Court notes that there is no merit to the Debtor's contention that the Jacuzzis' Opposition was not filed timely. Pursuant to the Local Bankruptcy Rules, the Opposition was due fourteen days prior to the hearing. The Opposition was filed on May 22, 2019, which is fourteen days prior to the hearing on the Motion.

The Debtor seeks relief from the Stipulated Judgment under Civil Rule 60(b)(3), (b)(5), and (b)(6), and Civil Rule 60(d)(3). The Debtor is not entitled to relief from the Stipulated Judgment under any of these provisions.

1. Civil Rule 60(b)(3)

Civil Rule 60(b)(3) permits the Court to relieve a party from a judgment for "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." A motion for relief under Civil Rule 60(b)(3) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Civil Rule 60(c)(1).

The Stipulated Judgment was entered on January 4, 2006. Debtor filed the Motion on April 29, 2019, more than thirteen years later. Debtor was not incarcerated in Mexico until April 17, 2008, and therefore had the ability to timely move for relief under Civil Rule 60(b)(3). The request for relief under Civil Rule 60(b)(3) is denied as untimely.

2. Civil Rule 60(b)(5)

Civil Rule 60(b)(5) permits the Court to relieve a party from a judgment if "the

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judgment has been satisfied, release, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.”

Debtor is not entitled to relief under any of the three prongs of Civil Rule 60(b)(5). With respect to the first prong, the Stipulated Judgment has not been satisfied, released, or discharged. There is no merit to the Debtor’s contention that a subsequent judgment obtained by the Jacuzzis in Mexico constitutes a satisfaction of the Stipulated Judgment. Within the meaning of Civil Rule 60(b)(5), a money judgment such as the Stipulated Judgment is satisfied only if it is paid in full.

With respect to the second prong, the Stipulated Judgment is not based on an earlier judgment that has been vacated.

The third prong does not apply because the Stipulated Judgment has no prospective application. Relief under the third prong is limited to judgments that apply prospectively. *See* 12 Moore’s Federal Practice - Civil § 60.47 (2019). A money judgment such as the Stipulated Judgment has no prospective application. *See In re Fine Paper Antitrust Litig.*, 840 F.2d 188, 193–94 (3d Cir. 1988).

3. Civil Rule 60(b)(6)

Civil Rule 60(b)(6) permits the Court to relieve a party from a judgment for “any other reason that justifies relief.” As the Ninth Circuit has explained, Civil Rule 60(b)(6) “should be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. Accordingly, a party who moves for such relief must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with ... the action in a proper fashion.” *Zurich Am. Ins. Co. v. Int’l Fibercom, Inc. (In re Int’l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007) (internal citations and quotations omitted).

The Debtor argues that he should be relieved from the Stipulated Judgment because of various actions taken by the Jacuzzis against him subsequent to the entry of the Stipulated Judgment. The Debtor asserts that the Jacuzzis were responsible for his incarceration in Mexico; his torture while in prison; the kidnapping of a family member; the kidnapping of his attorney; and various other nefarious actions.

The Motion’s underlying premise—that the Jacuzzis’ alleged wrongdoing entitles the Debtor to relief from the Stipulated Judgment—is not correct as a matter of law. The Debtor’s argument is essentially that his unlawful acts against the Jacuzzis, which resulted in the Stipulated Judgment, should be excused because of the Jacuzzis’ alleged unlawful acts against him. Civil Rule 60(b)(6) was never intended to be

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applied in such a manner. The Court makes no determination as to the truthfulness of any of the Debtor's allegations against the Jacuzzis, because even if all those allegations are true, they do not entitle the Debtor to relief from the Stipulated Judgment. The Debtor may (or may not) have independent claims against the Jacuzzis based upon the allegations set forth in the Motion. Those allegations do not, however, support vacatur of the Stipulated Judgment.

The Court notes that the Debtor agreed to the Stipulated Judgment after having been advised by competent counsel. In addition, the Court conducted a hearing to consider the appropriateness of the Stipulated Judgment on January 4, 2006. The Debtor and his counsel were both present at the hearing. At the hearing, the Court questioned the Debtor under oath to ensure that he fully understood the terms of the Stipulated Judgment. The Court entered the Stipulated Judgment only because it was satisfied that the Debtor had agreed to the Stipulated Judgment and fully understood its terms.

Furthermore, nothing in the Motion shows that entry of the Stipulated Judgment was in error. Rather, the focus of the Motion is entirely upon events that occurred after entry of the Stipulated Judgment.

The Debtor contends that the Jacuzzis induced him to enter into the Stipulated Judgment by representing that if he did so, the Jacuzzis would not attempt to prevent the Debtor from earning income that could be used to satisfy the Stipulated Judgment. In support of this contention, the Debtor furnishes an e-mail that he sent to the Jacuzzis' counsel on April 4, 2006. The e-mail contains the Debtor's own characterization of representations that he claims were made to induce him to enter into the Stipulated Judgment.

The e-mail is not admissible. The Debtor introduced the e-mail for the first time in his reply papers. Local Bankruptcy Rule 9013-1(g) provides that "matters raised for the first time in reply documents will not be considered." Even if the e-mail had been properly introduced, it is not relevant. The Stipulated Judgment is not contingent upon the Jacuzzis refraining from taking any action against the Debtor in the future. Consequently, even if the Jacuzzis had made the promises alleged in the e-mail, their failure to follow through on such promises would not be cause to set aside the Stipulated Judgment.

Debtor asserts that in connection with the Stipulated Judgment, the Jacuzzis assigned all their remaining claims against him to the Trustee, who later dismissed the claims. Debtor asserts that consequently, the Jacuzzis' continued prosecution of the Mexican Fraud Complaint was inequitable. Debtor additionally argues that the

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Jacuzzis' continued prosecution of the Mexican Fraud Complaint violated the discharge injunction.

Debtor's argument fails for two reasons. First, contrary to the Debtor's characterization, the Stipulated Judgment did not assign to the Trustee *all* of the Jacuzzis' claims against the Debtor. The Stipulated Judgment assigned to the Trustee only those claims asserted under § 727 of the Bankruptcy Code. The Mexican Fraud Complaint has no connection to the Jacuzzis' § 727 claims.

Second, neither the assignment of the § 727 claims to the Trustee or the discharge injunction prevented the Jacuzzis from assisting the authorities in Mexico with the continued prosecution of the Mexican Fraud Complaint, a criminal action. The discharge injunction does not protect the Debtor from criminal liability. Even if the Mexican Fraud Complaint was construed as an attempt to collect the Stipulated Judgment rather than an independent criminal action, the discharge injunction would not apply. That is because the discharge injunction applies only to attempts to collect debts that have been discharged, and the indebtedness established by the Stipulated Judgment was excepted from the Debtor's discharge. *See* 4 Collier on Bankruptcy ¶ 524.02 (16th ed. 2019) ("Of course, the discharge applies only to debts that are discharged.").

4. Civil Rule 60(d)(3)

Civil Rule 60(d)(3) sets forth grounds upon which the Court may relieve a party from a final judgment or order. Rule 60(d)(3) explains that "[t]his rule does not limit a court's power to set aside a judgment for fraud on the court." This Court has previously explained the effect and operation of Rule 60(d)(3) as follows:

Civil Rule 60(d)(3) is a codification of the Court's "inherent power ... to investigate whether a judgment was obtained by fraud." *Universal Oil Products Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946). "There is no statute of limitations for fraud on the court. And jurisdiction exists to consider such a claim even if there are no adversary parties then present before the court." *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 640 n.10 (N.D. Cal. 1978) *aff'd*, 645 F.2d 699 (9th Cir. 1981).

Fraud on the court embraces "only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Anand v.*

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CITIC Corp. (In re Intermagnetics Am., Inc.), 926 F.2d 912, 916 (9th Cir. 1991). The inquiry must focus upon "whether the alleged fraud harms the integrity of the judicial process":

‘[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.’

Intermagnetics, 926 F.2d at 916–917 (citing *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246 (1944), *overruled on other grounds*, *Standard Oil of Cal. v. United States*, 429 U.S. 17, 18 (1976)).

As explained by the Ninth Circuit in *United States v. Estate of Stonehill*, 660 F.3d 415, 444–45 (9th Cir. 2011):

Most fraud on the court cases involve a scheme by one party to hide a key fact from the court and the opposing party. For example, in *Levander* a corporate officer testified in a deposition that the corporation had not sold its assets, and a bankruptcy court subsequently entered a judgment against only the corporation. *Levander*, 180 F.3d at 1116–17. It turned out that the corporation had in fact transferred all of its assets to a related partnership. *Id.* We held that the false testimony constituted fraud on the court, and the bankruptcy court was allowed to amend its order to include the partnership as an additional party to the judgment. *Id.* at 1122–23.

Perjury or nondisclosure of evidence may constitute fraud upon the court if "that perjury or nondisclosure was so fundamental that it undermined the workings of the adversary process itself." *Id.* at 445.

Ehrenberg v. Roussos (In re Roussos), 541 B.R. 721, 728–29 (Bankr. C.D. Cal. 2015).

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The Debtor's theory is that the Jacuzzi's committed fraud on the court by making promises to the Debtor that they did not intend to keep for the purpose of inducing the Debtor to agree to the Stipulated Judgment. Even if these alleged misrepresentations did occur (a determination the Court does not make), they would not arise to the level of fraud on the court. The alleged misrepresentations were directed toward the Debtor, not the Court, and they did not prevent the Court from determining whether entry of the Stipulated Judgment was appropriate.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. The Court will prepare and enter an order denying the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A given named is used to distinguish Enrique Pimienta from the Debtor, Hugo Pimienta.

Party Information

Debtor(s):

Hugo Pimienta

Represented By
William H Brownstein

Defendant(s):

Hugo Pimienta

Represented By
William H Brownstein
Alberto J Campain

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Plaintiff(s):

John Jacuzzi Sr

Represented By
Richard A Illmer
Alberto J Campain

John Jacuzzi Jr

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campain

The Jacuzzi Family

Represented By
Leonard A Goldman
Richard A Illmer

James Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campain

Patricia Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campain

Margarita Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campain

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Irving M Gross
Edward M Wolkowitz
Natella Royzman
Carmela Pagay
Howard M Ehrenberg (TR)

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#2.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19

Docket 2144

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By
Bryan L Ngo
Susan I Montgomery

AppleCare Medical Group St.

Represented By
Susan I Montgomery

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

**#3.00 Hearing re [1572] and [1858] and [2145] Cure Objection Asserted by
UnitedHealthcare Insurance Company**

fr. 4-17-19

Docket 1858

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

UnitedHealthcare Insurance

Pro Se

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2:18-20151 Verity Health System of California, Inc.

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#4.00 Hearing re [1572] and [1869] Cure Objection Asserted by Experian Health fka Passport Health Communications Inc

fr. 4-17-19

Docket 1869

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Experian Health fka Passport Health

Represented By

Joseph D Frank

Alan I Nahmias

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19

Docket 1873

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19

Docket 1881

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19

Docket 1882

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By
Schuyler Carroll
Amir Gamliel

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1933] Cure Objection Asserted by **Angeles IPA A Medical Corporation**

fr. 4-17-19

Docket 1933

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Angeles IPA A Medical Corporation

Represented By

Mark A Neubauer

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19

Docket 1930

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1904] and [2113] re Objection Asserted by **Parallon Revenue Cycle Services, Inc. f/k/a The Outsource Group, Inc.**

fr. 4-17-19

Docket 1904

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objection asserted by Parallon Revenue Cycle Services, Inc., f/k/a The Outsource Group, Inc. ("Parallon") is moot because Strategic Global Management no longer seeks to assume the Parallon Agreement.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Parallon Revenue Cycle Services,

Represented By

Amir Gamliel

John D Penn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19

Docket 1949

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1

Docket 1965

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19

Docket 2058

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19

Docket 1954

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

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2:18-20151 Verity Health System of California, Inc.

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#15.00 Hearing re [1572] and [2108] Cure Objection Asserted by **Alcon Vision, LLC**

fr. 4-17-19

Docket 2108

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objection asserted by Alcon Vision, LLC [Doc. No. 2108] has been resolved. *See* Response to Alcon Vision, LLC's Objection to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May Be Assumed and Assigned [Doc. No. 2465] (stating that the Debtors agree with the cure amounts set forth in Alcon Vision's Cure Objection). The Debtors shall submit an order memorializing the resolution within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Alcon Vision, LLC

Represented By

Kevin H Morse

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2:18-20151 Verity Health System of California, Inc.

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#16.00 Hearing re [1572] and [1879] Cure Objection Asserted by **California Department of Health Care Services**

fr. 4-17-19

Docket 1879

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

California Department of Health

Represented By

Kenneth K Wang

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2:18-20151 Verity Health System of California, Inc.

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#17.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19

Docket 1850

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19

Docket 1890

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**
fr. 4-17-19

Docket 1940

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19

Docket 2157

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [2161] Cure Objection Asserted by **Cardinal Health**

fr. 4-17-19

Docket 2161

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objections asserted by Cardinal Health 100, LLC, Cardinal Health 200, LLC, and Cardinal Health 414, LLC [Doc. No. 2161] have been resolved. *See* Notice of Resolved and Unresolved Cure Objections Relating to Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment [Doc. No. 2420]. The Debtors shall submit an order memorializing the resolution within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cardinal Health

Represented By

Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing
RE: [1932] Motion to Assume Lease or Executory Contract (or REJECT)
(Goldberg, Marshall)

FR. 4-24-19

Docket 1932

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

4/23/2019

Tentative Ruling:

Hearing continued per stipulation. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing
RE: [1980] Application for Administrative Expenses (Valentine, Cecelia)

FR. 4-24-19; 5-8-19

Docket 1980

***** VACATED *** REASON: CONTINUED 6-18-19 AT 10:00 A.M.**

Tentative Ruling:

5/7/2019

No appearances required. The Court has approved the parties' stipulation to continue this hearing to **June 5, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing re [1572] Motion to assume lease or executory contracts

fr. 4-17-19

Docket 0

***** VACATED *** REASON: DUPLICATE ENTRY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare and Medi-Cal Provider Agreements.

Docket 0

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#26.00 Hearing re [1572] and [1819] Cure Objection Asserted by **NFS Leasing Inc**

fr. 4-17-19

Docket 1819

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objection asserted by NFS Leasing, Inc. [Doc. No. 1819] has been resolved. *See* Notice of Resolved and Unresolved Cure Objections Relating to Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment [Doc. No. 2420]. The Debtors shall submit an order memorializing the resolution within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NFS Leasing Inc

Represented By

Scott H Olson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#27.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19

Docket 1849

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By
Paul J Laurin
David M Powlen
Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#28.00 Hearing re [1572] and [1853] Cure Objection Asserted by NTT DATA Services Holding Corporation

fr. 4-17-19

Docket 1853

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objection asserted by NTT Data Services Holding Corporation [Doc. No. 1853] has been resolved. *See* Notice of Resolved and Unresolved Cure Objections Relating to Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment [Doc. No. 2420]. The Debtors shall submit an order memorializing the resolution within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NTT DATA Services Holding

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Sabrina L Streusand
David Guess

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#29.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19

Docket 1857

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#30.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**
fr. 4-17-19

Docket 1863

*** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#31.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19

Docket 1866

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#32.00 Hearing re [1572] and [1875] Cure Objection Asserted by **Conifer Health Solutions, LLC**

fr. 4-17-19

Docket 1875

Tentative Ruling:

6/4/2019

No appearances required. The Cure Objection asserted by Conifer Health Solutions, LLC [Doc. No. 1875] has been resolved. See Notice of Resolved and Unresolved Cure Objections Relating to Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment [Doc. No. 2420]. The Debtors shall submit an order memorializing the resolution within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Conifer Health Solutions, LLC

Represented By
David I Horowitz

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Scott J Vail

Gregory F Pesce

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#33.00 Hearing re [1572] and [1819] Cure Objection Asserted by **NFS Leasing Inc**

fr. 4-17-19

Docket 1819

***** VACATED *** REASON: DUPLICATE OF CALENDAR NO. 26.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NFS Leasing Inc

Represented By

Scott H Olson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#34.00 HearingRE: [2390] Motion Notice of Motion and Motion of Official Committee of Unsecured Creditors for Entry of An Order (I) Clarifying Certain Bankruptcy Code Requirements and (II) Approving Protocol for Providing Access to Information to Unsecured Creditors, Nunc Pro Tunc to September 14, 2018

Docket 2390

Tentative Ruling:

6/4/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Official Committee of Unsecured Creditors for Entry of an Order (I) Clarifying Certain Bankruptcy Code Requirements and (II) Approving Protocol for Providing Access to Information to Unsecured Creditors, *Nunc Pro Tunc* to September 14, 2018 [Doc. No. 2390] (the "Motion")
 - a) Proof of service of [Motion] [Doc. No. 2392]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases.

The Official Committee of Unsecured Creditors (the "Committee") moves for entry of an order (1) clarifying the Committee's statutory disclosure obligations to the Debtors' unsecured creditors, and (2) approving a protocol for the sharing of information with unsecured creditors (the "Creditor Information Protocol"). The proposed Creditor Information Protocol provides for the following procedures for sharing information with unsecured creditors:

- 1) The Committee will establish a website, to be hosted by the Debtors' claims

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

and noticing agent, [Note 1] that will provide:

- a) General information concerning the Debtors (including access to the case docket and general information concerning significant parties in the cases);
 - b) General information concerning the Committee, including the names of Committee members and a description of the Committee's duties and rights;
 - c) Contact information for the Debtors, the Debtors' counsel and financial advisor, and the Committee's counsel and financial advisor;
 - d) The voting deadline with respect to any Chapter 11 Plan filed in these cases;
 - e) A calendar with upcoming significant events;
 - f) Access to the claims register;
 - g) The Debtors' monthly operating reports;
 - h) Press releases issued by the Committee or any of the Debtors; and
 - i) Links to other relevant websites, such as the Debtors' corporate website and the website of the Office of the United States Trustee.
- 2) The Committee will also establish and maintain an electronic mail address for creditors to submit questions and comments.

The Committee seeks a determination that, by complying with the Creditor Information Protocol, the Committee will be in compliance with the disclosure obligations imposed by § 1102(b)(3). The Committee further seeks a determination that § 1102(b)(3) does not authorize or require the Committee to provide access to confidential, proprietary, and/or other non-public information to creditors who are not members of the Committee. The Committee states that if it were required to disclose confidential information to non-Committee members, its ability to obtain proprietary information from the Debtors would be severely compromised. The Committee requests that the relief sought be granted *nunc pro tunc* to the date of the Committee's formation.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 1102(b)(3) requires the Committee to:

- (A) Provide access to information for creditors who—
 - (i) hold claims of the kind represented by that committee; and

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

CONT... **Verity Health System of California, Inc.**

Chapter 11

- (ii) are not appointed to the committee;
- (B) solicit and receive comments from the creditors described in subparagraph (A); and
- (C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

The Court finds that the proposed Creditor Information Protocol is an appropriate means for the Committee to satisfy the disclosure obligations imposed by § 1102(b) (3). The website contemplated by the Creditor Information Protocol will provide unsecured creditors access to material information regarding these cases. The cost of establishing the website will be *de minimis*.

The Court finds that the Committee's disclosure obligations under § 1102(b)(3) do not require the Committee to share confidential, proprietary, and/or other non-public information (the "Confidential Information") with unsecured creditors who are not members of the Committee. Requiring the Committee to share Confidential Information would impede the Committee's ability to carry out its statutory obligation to investigate the Debtors under § 1103. The Debtors would be reluctant to share Confidential Information with the Committee if they knew that such information could be disclosed. *See In re Refco Inc.*, 336 B.R. 187, 197 (Bankr. S.D.N.Y. 2006) ("Maintaining the parties' reasonable expectations of confidentiality, therefore, is often critical to a committee's performance of its oversight and negotiation functions, compliance with applicable securities laws, and the proper exercise of committee members' fiduciary duties.").

Based upon the foregoing, the Motion is GRANTED in its entirety. The Committee shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, June 5, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Note 1

The costs of the website will be *de minimis*. The Debtors have agreed that the costs of hosting the website will be accounted for and paid under Kurtzman Carson Consultant's ("KCC") broader retention as the Debtors' claims and noticing agent. **The Court has reviewed the website. The docket tab only references filings through September 2018. Movant must insure that the KCC website is brought current.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:13-24853 National Fire Systems And Services, Inc.

Chapter 7

#100.00 APPLICANT: Trustee: RICHARD K. DIAMOND

Hearing re [63] and [64] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$6,873.18 approved, but payment shall be limited to \$1,869.90 in view of the Trustee's representation that the estate is administratively insolvent

Total Expenses: \$318.42

Franchise Tax Board: \$5,227.62 approved, but payment shall be limited to \$1,422.14 in view of the Trustee's representation that the estate is administratively insolvent

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

National Fire Systems And Services,

Represented By
Shahin Motallebi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

CONT... National Fire Systems And Services, Inc.

Chapter 7

Trustee(s):

Richard K Diamond (TR)

Represented By
Kevin Meek
George E Schulman
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:13-24853 National Fire Systems And Services, Inc.

Chapter 7

#101.00 APPLICANT: Attorney for Trustee: DANNING GILL DIAMOND & KOLLITZ LLP

Hearing re [63] and [64] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$182,425.50 approved, but payment shall be limited to \$49,627.62 in view of the Trustee's representation that the estate is administratively insolvent

Expenses: \$10,810.07

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

National Fire Systems And Services,

Represented By
Shahin Motallebi

Trustee(s):

Richard K Diamond (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

CONT...

National Fire Systems And Services, Inc.

Kevin Meek

George E Schulman

Eric P Israel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:13-24853 National Fire Systems And Services, Inc.

Chapter 7

#102.00 APPLICANT: Accountant for Trustee: LEA ACCOUNTANCY LLP

Hearing re [63] and [64] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$12,154.50 approved, but payment shall be limited to \$3,306.55 in view of the Trustee's representation that the estate is administratively insolvent

Expenses: \$710.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

National Fire Systems And Services,

Represented By
Shahin Motallebi

Trustee(s):

Richard K Diamond (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

CONT...

National Fire Systems And Services, Inc.

Kevin Meek

George E Schulman

Eric P Israel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:13-24853 National Fire Systems And Services, Inc.

Chapter 7

#103.00 Other: FRANCHISE TAX BOARD

Hearing re [63] and [64] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

See Calendar No. 100, incorporated in full by reference.

Party Information

Debtor(s):

National Fire Systems And Services,

Represented By
Shahin Motallebi

Trustee(s):

Richard K Diamond (TR)

Represented By
Kevin Meek
George E Schulman
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#104.00 APPLICANT: TIMOTHY J. YOO, CHAPTER 7 TRUSTEE

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$9,823.99

Total Expenses: \$143.23

U.S. Bankruptcy Court: \$700

Southbay Passive Income: \$5,000 [Per Order entered 10/23/18, Doc. No. 56]

Jeffrey Sumpter: \$1,000 [Per Order entered 12/27/18, Doc. No. 62]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

CONT... Hiep Tan Tran

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#105.00 APPLICANT: WESLEY H AVERY, Attorney for Trustee

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$64,987.50

Expenses: \$678.76

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Pro Se

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#106.00 Other: SOUTHBAY PASSIVE INCOME, Realtor for Trustee Fees

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

See Cal. No. 104, incorporated in full by reference.

Party Information

Debtor(s):

Hiep Tan Tran

Pro Se

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#107.00 Other: JEFFREY L SUMPTER, Other Professional Fees

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

See Cal. No. 104, incorporated in full by reference.

Party Information

Debtor(s):

Hiep Tan Tran

Pro Se

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 5, 2019

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#108.00 UNITED STATES BANKRUPTCY COURT, Clerk of the Court Costs

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/4/2019

See Cal. No. 104, incorporated in full by reference.

Party Information

Debtor(s):

Hiep Tan Tran

Pro Se

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:18-20281 Ronelio Garcia

Chapter 7

#1.00 HearingRE: [74] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1947 237th Pl, Torrance, CA 90501 . (Jafarnia, Merdaud)

Docket 74

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$1,050,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$1052,239.63. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Ronelio Garcia

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ronelio Garcia

Represented By

Dennis E McGoldrick

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#2.00 HearingRE: [68] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Sam Nguyen dba Sam Bullion & Coin v Bahram Zendedel et al, BC706502 . Additional attachment(s) added on 5/8/2019 (Evangelista, Maria). Additional attachment(s) added on 5/8/2019 (Evangelista, Maria). Additional attachment(s) added on 5/8/2019 (Evangelista, Maria).

Docket 68

Tentative Ruling:

6/6/2019

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 68] (the "R/S Motion")
2. Declaration of Nico. N. Tabibi in Support of Motion for Relief From the Automatic Stay in Nonbankruptcy Forum [Doc. No. 69]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Bahram Zendedel (the "Debtor") filed this voluntary chapter 7 case on January 18, 2019 (the "Petition Date"). Shortly thereafter, Peter J. Mastan was appointed to serve as the chapter 7 trustee and continues to serve in that capacity (the "Trustee").

Creditor Sam Thuy Nguyen dba Sam Bullion & Coin ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed under applicable non-bankruptcy law to final judgment with an action pending before the Los Angeles Superior Court (the "State Court") captioned *Sam Nguyen dba Sam Bullion & Coin v. Bahram Zendedel et al.*, (Case No. BC706502) (the "State Court Action"). Movant initiated the State Court Action on May 16, 2018, by filing a complaint against the Debtor and other non-debtor defendants asserting claims for (1) fraudulent

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT...

Bahram Zendedel

Chapter 7

transfers/conveyances/conspiracy to defraud, and to set aside or annul fraudulent transfers/conveyances, (2) fraudulent transfers/conveyances, and to set aside or annul fraudulent transfers/conveyances, (3) temporary restraining order, preliminary and permanent injunction, and (4) unjust enrichment-constructive trust (the "Complaint"). Ex. 1. Trial is scheduled to begin on November 4, 2019.

In support of its request for stay relief, Movant checked the form boxes stating that it seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the bankruptcy estate, that mandatory abstention applies, that the claims are nondischargeable in nature and can be most expeditiously resolved in State Court, that the claims arise under nonbankruptcy law, and that the timing of the filing of this case indicates that it was intended to delay or interfere with the State Court Action.

In addition to an order granting relief from stay, Movant requests that the Court waive the 14-day stay prescribed by FRBP 4001(a)(3) and that the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days. Movant also requests that the stay be annulled retroactively to the petition date to cure any post-petition actions taken in the State Court Action, but does not identify what actions were taken in violation of the stay.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause . . ." 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Bahram Zendedel

Chapter 7

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt[.]"

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

Movant has established a prima face case that "cause" exists to grant relief from stay under section 362(d)(1). Granting relief from stay will best promote interests of judicial economy because the litigation involves several non-debtor defendants and

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Bahram Zendedel

Chapter 7

trial is set to begin on November 4, 2019. While the State Court is not a specialized tribunal established specifically to hear the claims asserted in the Complaint, the State Court is more intimately familiar with the parties' dispute and applicable California law and can more expeditiously move the litigation to final judgment.

Additionally, as of the preparation of this tentative ruling, no opposition has been filed. Therefore, interested parties are deemed to have consented to the granting of the motion pursuant to Local Bankruptcy Rule 9013-1(h).

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§ 523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

Movant's request to annul the stay retroactively to the Petition Date is DENIED for lack of good cause shown. The Court also DENIES Movant's request for an order that is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days and for waiver of the 14-day stay prescribed by Federal Rule 4001(a)(3). All other relief requested but not specifically granted herein is denied.

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED.

Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Bahram Zendedel

Chapter 7

213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-13363 Sergio F Lopez Sandoval and Rocio Anabel Lopez

Chapter 7

#3.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Jaguar F-Pace VIN#SADCK2BN5HA090624 with proof of service. (Yabes, Gilbert)

Docket 13

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Sergio F Lopez Sandoval and Rocio Anabel Lopez Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sergio F Lopez Sandoval

Represented By
Marlin Branstetter

Joint Debtor(s):

Rocio Anabel Lopez

Represented By
Marlin Branstetter

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-14361 Sofiyan Dovlatyan

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HONDA ACCORD, VIN: 1HGC R2F3 2FA1 45383 .

Docket 9

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Sofiyan Dovlatyan

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sofiyan Dovlatyan

Represented By
Anita Khachikyan

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-14458 Juan Alonso Fernandez

Chapter 7

#5.00 Hearing
RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Nissan Sentra, VIN 3N1CB7AP2JY230841 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Juan Alonso Fernandez

Chapter 7

Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Juan Alonso Fernandez

Represented By
Juan Castillo-Onofre

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-14879 Alejandra Cebreros Valenzuela

Chapter 7

#6.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Dodge Charger VIN 2C3CDXBGXJH197037. (Wang, Jennifer)

Docket 15

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Alejandra Cebreros Valenzuela

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alejandra Cebreros Valenzuela

Represented By
Stephen L Burton

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:19-15272 Trisha L. Hanson

Chapter 7

#7.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA ODYSSEY, VIN: 5FNR L5H2 9GB0 77432 .

Docket 11

Tentative Ruling:

6/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

CONT... Trisha L. Hanson

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Trisha L. Hanson

Represented By
Matthew D. Resnik

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:19-15372 MG Express Car Wash Inc.

Chapter 7

#8.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3312 W. Florence Avenue, Los Angeles, CA 90043 . (Cruz, Joseph)

Docket 13

Tentative Ruling:

6/6/2019

The Motion is DENIED without prejudice. The proof of service [Doc. No. 13] does not reflect that the Motion was served in accordance with Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure which requires service on domestic corporations to be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" Movant may refile the Motion with service upon the Debtor in accordance with applicable local and federal rules.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

MG Express Car Wash Inc.

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 HearingRE: [2408] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: NonBankruptcy Action 18CV335208.

Docket 2408

Tentative Ruling:

6/7/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., O'Connor Hospital, O'Connor Hospital Foundation and Sydney Thomson, M.D. and Anthony Barajas, Granting Sydney Thomson, M.D. and Anthony Barajas Relief from the Automatic Stay So That Superior Court Case May Proceed* [Doc. No. 2468] is APPROVED. Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:19-16478 Rambutan Thai,a California corporation

Chapter 11

#100.00 Hearing re [4] Cash Management Motion

Docket 0

Tentative Ruling:

6/6/2019

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Cash Management Motion.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Debtor's Emergency Motion to Maintain Cash Management Account & Request to Pay Associated Fees [Doc. No. 5] (the "Motion")
 - a) Order Setting Hearing on First Day Motions [Doc. No. 2]
 - b) Declaration of Sandra Rodriguez of Service of Process [Doc. No. 6]

I. Facts and Summary of Pleadings

Rambutan Thai, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on June 1, 2019. The Debtor operates a restaurant on Sunset Boulevard in the Silver Lake neighborhood of Los Angeles, which does business as Same Same Thai. The Chapter 11 filing was precipitated by a sales tax audit conducted by the California Department of Tax and Fee Administration (the "Tax Auditor"). The Tax Auditor asserts a claim for unpaid sales taxes in the approximate amount of \$350,000 for the years 2010 through 2016, which the Debtor disputes. The Debtor intends to continue restaurant operations and restructure the sales tax claim through a Chapter 11 plan.

The Debtor seeks authorization to maintain its pre-petition bank account, maintained at J.P. Morgan Chase, N.A. (the "Chase Account"), until it can transfer its credit card processing and payroll processing services to its new debtor-in-possession account. Approximately 92% of the Debtor's revenues are derived from credit card purchases, which are processed by Nationwide Merchant Solutions, Inc. ("Nationwide"). On a monthly basis, Nationwide processes credit card transactions, deducts a processing fee, and deposits the difference into the Chase Account. In April 2019, Nationwide processed \$82,595.33 of credit card transactions, deducted \$2,197.31 in processing fees, and deposited \$80,398.02 into the Chase Account.

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CONT... Rambutan Thai,a California corporation

Chapter 11

The Debtor's payroll is processed by Automatic Data Processing ("ADP"). Payroll is also processed from the Chase Account. The Debtor states that its business operations will be severely disrupted if it is not permitted to temporarily maintain the Chase Account. The Debtor does not provide an estimate as to how long it will take to transfer its credit card and payroll processing services to its debtor-in-possession account.

The Debtor seeks authorization (1) to pay Nationwide an estimated \$2,200 in pre-petition credit card processing fees and (2) to pay ADP approximately \$198 in pre-petition payroll processing fees.

II. Findings and Conclusions

At the outset, the Court notes that it is unclear from the *Declaration of Sandra Rodriguez of Service of Process* [Doc. No. 6] whether the Office of the United States Trustee (the "UST") received telephonic notice of the hearing, as ordered by the Court. The UST is not listed among the entities that received telephonic notice. The Debtor should be prepared to advise the Court whether the UST received the required telephonic notice.

Local Bankruptcy Rule 2015-2 requires the Debtor to comply with guidelines imposed by the United States Trustee (the "UST Guidelines"). The UST Guidelines require that upon the filing of the petition, the Debtor's pre-petition bank accounts be closed and new debtor-in-possession bank accounts be opened at financial institutions that have been designated as authorized depositories by the UST.

In this case, requiring the Debtor to immediately close the Chase Account would disrupt the Debtor's business operations. Closure would prevent the Debtor from paying its employees and receiving revenue earned from customers paying by credit card credit. The Court finds it appropriate to permit the Debtor to temporarily maintain the Chase Account until payroll and credit card processing services can be transitioned to the Debtor's debtor-in-possession account. The Debtor shall transition the payroll and credit card processing services to the debtor-in-possession account by no later than **July 1, 2019**. By that same date, the Debtor shall file a declaration with the Court establishing that the transition has been completed.

The Debtor is authorized to pay Nationwide approximately \$2,200 for pre-petition credit card processing services and is authorized to pay ADP approximately \$198 for pre-petition payroll processing services. The Court notes that in dicta, the Supreme Court has recently noted that Bankruptcy Courts have approved "'critical vendor' orders that allow payment of an essential suppliers' prepetition invoices." *Czyzewski*

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CONT... Rambutan Thai,a California corporation

Chapter 11

v. Jevic Holding Corp., 137 S. Ct. 973, 985, 197 L. Ed. 2d 398 (2017). The Supreme Court’s statement in *Jevic* obviously was not a holding upon the validity of a critical vendor order; nonetheless, the Supreme Court’s acknowledgment that Bankruptcy Courts have reasoned that critical vendor orders are necessary to “enable a successful reorganization and make even the disfavored creditors better off” is significant. *Id.* at 985.

More on point, in the context of a cross-collateralization clause, the Ninth Circuit has recognized that “[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.” *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). The Ninth Circuit’s recognition of the necessity of paying prepetition debts to “providers of unique and irreplaceable supplies” is particularly salient; that relief is most analogous to the relief sought by the instant Motion.

The Debtor has established that it will suffer serious harm if it is not able to pay Nationwide and ADP. Absent payment to ADP, the Debtor will be unable to timely pay its employees. Absent payment to Nationwide, the Debtor will be unable to receive the revenues that it has already earned.

Prepetition payments obviously are frowned upon because they subvert the Bankruptcy Code’s priority scheme. Yet the priority scheme will be of little use to anyone if value is destroyed from impairment of the Debtor’s business operations.

In connection with emergency first day motions, the Court typically grants relief on an interim basis and conducts a subsequent final hearing. In this case, a subsequent final hearing is not necessary given the Court’s order that the Debtor transition its accounts with Nationwide and ADP to its debtor-in-possession account by **July 1, 2019**.

Party Information

Debtor(s):

Rambutan Thai,a California

Represented By
Jeffrey S Shinbrot

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11:00 AM

2:19-16478 Rambutan Thai,a California corporation

Chapter 11

#101.00 Hearing re [4] Motion to Prohibit Utilities from Discontinuing Service

Docket 0

Tentative Ruling:

6/6/2019

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Motion.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Debtor's Emergency Motion for Order Establishing Procedures for Providing Adequate Assurance of Payment to Utility Companies for Post-Petition Services and Prohibiting Alteration, Refusal or Discontinuance of Utility Services [Doc. No. 4] (the "Motion")
 - a) Order Setting Hearing on First Day Motions [Doc. No. 2]
 - b) Declaration of Sandra Rodriguez of Service of Process [Doc. No. 6]

I. Facts and Summary of Pleadings

Rambutan Thai, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on June 1, 2019. The Debtor operates a restaurant on Sunset Boulevard in the Silver Lake neighborhood of Los Angeles, which does business as Same Same Thai. The Chapter 11 filing was precipitated by a sales tax audit conducted by the California Department of Tax and Fee Administration (the "Tax Auditor"). The Tax Auditor asserts a claim for unpaid sales taxes in the approximate amount of \$350,000 for the years 2010 through 2016, which the Debtor disputes. The Debtor intends to continue restaurant operations and restructure the sales tax claim through a Chapter 11 plan.

The Debtor seeks an order (1) establishing procedures for providing adequate assurance of payment to utility companies for post-petition services and (2) prohibiting utility companies from altering or discontinuing utility services. The Debtor has accounts with Southern California Gas Company ("SoCal Gas") and the Los Angeles Department of Water and Power (the "LADWP"). The Debtor's average monthly gas bill is \$500; its average monthly water and electrical bill is \$1,000. To provide adequate assurance of payment, the Debtor proposes the following

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CONT... Rambutan Thai,a California corporation
procedures:

Chapter 11

- 1) Within twenty days of entry of an order approving the Motion (the “Utility Order”), the Debtor will deposit \$750 into a separate debtor-in-possession Utility Account. The \$750 deposit represents half of the Debtor’s average monthly utilities bill (\$250 of the deposit is allocated to SoCal Gas and \$500 of the deposit is allocated to LADWP).
- 2) The Debtor shall serve the Utility Order and Motion on all utility providers within three days after the Utility Order has been entered.
- 3) In the event that any utility provider believes that the Utility Account does not provide adequate assurance of payment, such utility provider shall be required to file, within fourteen days from the date of service of the Utility Order, a specific request for additional adequate assurance (the “Additional Assurance Request”). Any utility provider who does not timely file an Additional Assurance Request shall be deemed to have received adequate assurance of payment and shall be thereafter prohibited from altering or discontinuing service to the Debtor.
- 4) A utility provider who timely files an Additional Assurance Request may not alter or discontinue service unless so authorized by the Court after a hearing on the Additional Assurance Request.

II. Findings and Conclusions

Section 366(c)(2) provides that a utility company may “alter, refuse, or discontinue utility service if, during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor . . . adequate assurance of payment for utility service that is satisfactory to the utility.” However, § 366(c)(3) provides that upon request of a party in interest and after notice and a hearing, the court “may order modification of the amount of an assurance of payment” under § 366(c)(2).

In *In re Circuit City Stores, Inc.*, 2009 WL 484553 (Bankr. E.D. Va. Jan. 14, 2009), the court evaluated proposed procedures for determining adequate assurance of payment to utility providers. The *Circuit City* court concluded:

The statute does not prohibit a court from making a determination about the adequacy of an assurance payment until only after a payment “satisfactory to the utility” has been received from the debtor under § 366(c)(2). The first

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Chapter 11

clause of § 366(c)(2) clearly renders the entire section subject to the court's authority outlined in § 366(c)(3).¹⁶ See 11 U.S.C. § 366(c)(2); see also 3 *Collier on Bankruptcy* ¶ 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.2008) (stating § 366(c)(2) means that the debtor must “pay what the utility demands, unless the court orders otherwise.”).

In re Circuit City Stores, Inc., No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009).

The *Circuit City* court rejected the interpretation of § 363(c)(2) that “concludes that a bankruptcy court may not determine the appropriate amount of adequate assurance until the debtor has first paid whatever amount the utility has demanded.” *Id.* at *3. Such an interpretation, the court reasoned, “is simply unworkable” and “could lead to absurd results.” *Id.* For instance, a utility company might “simply fail to respond to a debtor’s offer of adequate assurance, or it may choose to respond on the thirtieth day. In either event, the result would be calamitous for a debtor in the throes of bankruptcy.” *Id.*

“Whether utilities have adequate assurance of future payment is determined by the individual circumstances of each case.” *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002). “Accordingly, bankruptcy courts must be afforded reasonable discretion in determining what constitutes ‘adequate assurance’ of payment for continuing utility services.” *Virginia Elec. & Power Co. v. Caldor, Inc.-New York*, 117 F.3d 646, 650 (2d Cir. 1997) (citations omitted).

The Court finds that the procedures proposed by the Debtor provide adequate assurance of payment to utility providers within the meaning of § 366. However, the Debtor must fund the Utility Account within twenty days of the date of the petition—that is, by June 21, 2019—rather than within twenty days of entry of the Utility Order. Section 366(b) authorizes utility providers to alter, refuse, or discontinue service if the Debtor does not furnish adequate assurance of payment within twenty days of the petition date.

The procedures which the Court is prepared to approve provide an opportunity for utility providers to object to the adequacy of the assurance of payment furnished by the Debtor. Unless a utility provider timely objects, no further hearing on the Motion will be conducted.

Party Information

Debtor(s):

Rambutan Thai,a California

Represented By

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Rambutan Thai,a California corporation

Jeffrey S Shinbrot

Chapter 11

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10:00 AM

: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#1.00 Status Conference
RE: [11] Motion to Change Venue/Inter-district Transfer Adversary Proceeding
to W.D. Wash. (Plevin, Mark)

fr: 8-15-18; 11-13-18; 2-12-19

Docket 11

Tentative Ruling:

6/10/2019

On July 30, 2018, the Bankruptcy Court for the Western District of Washington entered a § 105 injunction staying this proceeding (the "Stay Order"). An appeal of the Stay Order is currently pending before the Ninth Circuit.

Litigation before this Court cannot proceed until the appeal of the Stay Order has been finally resolved. Consistent with the Court's prior orders, all deadlines in this action remain tolled until the appeal of the Stay Order has been finally resolved.

A continued Status Conference shall be held on **December 10, 2019, at 10:00 a.m.** By no later than fourteen days prior to the continued Status Conference, all parties shall file a Joint Status Report, which shall discuss (a) the status of the appeal of the Settlement Orders (as that term is defined in the *Motion by Century Indemnity Company to Transfer Venue to the Debtor's Home Court, the Western District of Washington* [Doc. No. 11] and (b) any events occurring in the Chapter 11 bankruptcy case of *Fraser's Boiler Service, Inc.*, Case No. 18-41245-BDL (Bankr. W.D. Wash.) that are relevant to the disposition of this action.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT...

Chapter 0

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's, Hartford Accident And Indemnity	Pro Se Represented By Philip E Smith
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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10:00 AM

2:16-17889 Manuel J. Leon, Jr.

Chapter 7

Adv#: 2:18-01157 Gonzalez v. Leon Cruz

#2.00 Status Conference re **consummation of the settlement** RE: [1] Adversary case 2:18-ap-01157. Complaint by Rosendo Gonzalez against Ramona Leon Cruz. (Charge To Estate). Complaint for Avoidance and Recovery of Fraudulent and Preferential Transfers Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Shinbrot, Jeffrey)

fr. 3-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 6-16-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel J. Leon Jr.

Represented By
Gary Leibowitz
Jacqueline D Serrao

Defendant(s):

Ramona Leon Cruz

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Jeffrey S Shinbrot

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Jeffrey S Shinbrot

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10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17; 6-6-18; 9-11-18; 1-15-19

Docket 1

Tentative Ruling:

6/10/2019

In this dischargeability action, Plaintiffs allege that Defendant committed willful and malicious injury by secretly videotaping Plaintiffs changing and using the restroom. The Court has stayed this action pending resolution of the underlying state court action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable (the "State Court Action"). Discovery is currently being conducted in the State Court Action.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **December 10, 2019, at 10:00 a.m.**
- 2) By no later than fourteen days prior to the hearing, the parties shall submit a Joint Status Report, which shall describe in detail the status of the State Court Action.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Kevin Thomas Roy

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an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#4.00 Status Hearing

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

fr. 1-15-19; 4-16-19; 4-16-19; 5-14-19

Docket 1

Tentative Ruling:

6/10/2019

Defendant's deadline to file an Answer to the Complaint was extended via multiple stipulations. Although this action has been pending since October 2018, Defendant filed an Answer on May 6, 2019.

Having reviewed the Joint Status Report filed by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Pursuant to the parties' request, in view of the recent filing of Defendant's

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Lempa Roofing Inc

Chapter 7

Answer, the litigation deadlines previously ordered shall be continued, as follows:

- a) The last day to amend pleadings and/or join other parties is **7/11/2019**.
- b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
- c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to

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CONT...

Lempa Roofing Inc

Chapter 7

- introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
- ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

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CONT... Lempa Roofing Inc

Chapter 7

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

The Home Depot, Inc.

Pro Se

Home Depot Credit Services

Pro Se

Home Depot U.S.A., Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Anthony A Friedman

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01387 Elissa D. Miller, solely in her capacity as chapte v. OJ Insulation, L.P., a

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01387. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against OJ Insulation, L.P., a Delaware limited partnership. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

This action has settled. All litigation dates and deadlines previously ordered by the Court are VACATED. A continued Status Conference to monitor consummation of the settlement shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By

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CONT... QUIGG LA11, LLC

Chapter 7

David M Reeder

Defendant(s):

OJ Insulation, L.P., a Delaware

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01390 Elissa D. Miller, solely in her capacity as chapte v. Mulligan's Painters, Inc.,

#6.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01390. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mulligan's Painters, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions.

In the most recent Status Report, the Trustee states that her prosecution of this action has been complicated by staffing issues.

Good cause appearing, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) A continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report, which should report on the progress of settlement discussions, shall be submitted by no later than fourteen days prior to the hearing. If by the time of the continued Status Conference it does not appear that the parties have engaged in meaningful settlement discussions, the Court will order the matter to formal mediation.

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CONT... QUIGG LA11, LLC

Chapter 7

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mulligan's Painters, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions.

The Trustee and the Defendant have agreed upon an open-ended extension of Defendant's deadline to respond to the Complaint, terminable by the Trustee, to enable the parties to engage in settlement discussions.

Having reviewed the Trustee's Unilateral Status Report, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) A continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report, which should report on the progress of settlement discussions, shall be submitted by no later than fourteen days prior to the hearing. If by the time of the continued Status Conference it does not appear that the parties have engaged in meaningful settlement

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CONT...

QUIGG LA11, LLC

Chapter 7

discussions, the Court will order the matter to formal mediation.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Premium Energy Solutions, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01392 Elissa D. Miller, solely in her capacity as chapte v. State Plastering, Inc., a

#8.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01392. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against State Plastering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

State Plastering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01393 Elissa D. Miller, solely in her capacity as chapte v. Sunland Wood Products,

#9.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01393. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Sunland Wood Products, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Pursuant to the parties' request, the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
- 2) The litigation deadlines previously ordered shall continue to apply.
- 3) A continued Status Conference shall be held on **August 13, 2019, at 10:00**

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CONT...

QUIGG LA11, LLC

Chapter 7

a.m. A Joint Status Report, which should report on the progress of mediation, shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference. The Trustee shall submit an order referring the matter to the Mediation Panel.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Sunland Wood Products, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01394 Elissa D. Miller, solely in her capacity as chapte v. Grandmaison

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01394. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Grandmaison Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr.3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Grandmaison Construction, Inc., a

Represented By
Mark T Young

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01395 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#11.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01395. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

3/18/2019

Defendant has not timely responded to the Complaint. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) By no later than **April 23, 2019**, Plaintiff shall have obtained entry of Defendant's default and shall have filed a Motion for Default Judgment.
- 2) The Motion for Default Judgment shall be filed on a negative-notice basis, pursuant to Local Bankruptcy Rule 9013-1(o).
- 3) All litigation dates and deadlines previously set by the Court are VACATED.
- 4) A continued Status Conference is set for **June 11, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. If default judgment has been entered, the Status Conference will go off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01396 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#12.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01396. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation, Cemex Construction Materials Pacific, LLC, a Delaware limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

This action has settled. All litigation dates and deadlines previously ordered by the Court are VACATED. In view of the settlement, the Trustee's *Motion for Default Judgment* [Doc. No. 18] shall be deemed to have been withdrawn. A continued Status Conference to monitor consummation of the settlement shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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CONT... QUIGG LA11, LLC
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Chapter 7

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Cemex Construction Materials

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01397 Elissa D. Miller, solely in her capacity as chapte v. Allied Roofing and

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01397. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Allied Roofing and Waterproofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Allied Roofing and Waterproofing,

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#14.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01399 Elissa D. Miller, solely in her capacity as chapte v. Old World Precast, Inc., a

#15.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01399. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Old World Precast, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Old World Precast, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Daniel A Lev
Asa S Hami
Jessica Vogel

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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01400 Elissa D. Miller, solely in her capacity as chapte v. RP Designs, Inc., a

#16.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01400. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against RP Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

RP Designs, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01401 Elissa D. Miller, solely in her capacity as chapte v. Truskett et al

#17.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01401. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Robert L. Truskett, Robert L. Truskett Roofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Robert L. Truskett

Pro Se

Robert L. Truskett Roofing, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01402 Elissa D. Miller, solely in her capacity as chapte v. Frank H. Roll-Off

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01402. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Frank H. Roll-Off Service, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Frank H. Roll-Off Service, an

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3 Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

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10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01405 Elissa D. Miller, solely in her capacity as chapte v. American Express

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01405. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against American Express Company, a New York Corporation, American Express Travel Related Services Company, Inc., a New York Corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

American Express Company, a New

Pro Se

American Express Travel Related

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
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Hearing Room 1568

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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#21.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions. In the most recent Status Report, the parties request that the matter **not** be referred to formal mediation at this time. In addition, the Trustee states that her prosecution of this action has been complicated by the recent staffing issues.

Good cause appearing, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) A continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report, which should report on the progress of settlement discussions, shall be submitted by no later than fourteen days prior to the hearing. If by the time of the continued Status Conference it does not appear that the parties have engaged in meaningful settlement discussions, the Court will order the matter to formal mediation.

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CONT... QUIGG LA11, LLC

Chapter 7

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01407 Elissa D. Miller, solely in her capacity as chapte v. HD Supply Construction

#22.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01407. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against HD Supply Construction Supply Group, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 21, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

HD Supply Construction Supply

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

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Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Los Angeles
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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01408 Elissa D. Miller, solely in her capacity as chapte v. Cook Development

#23.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01408. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Cook Development Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. Pursuant to the parties' request, the Court also ordered the matter to formal mediation. The Trustee has not yet submitted an order assigning the matter to mediation.

The Court notes that the Defendant, possibly in error, checked the box indicating that it does not consent to the Bankruptcy Court's entry of a final judgment. In connection with the previous Status Conference, the Court issued a Scheduling Order that was predicated upon the Defendant's consent to the Bankruptcy Court's entry of a final judgment. *See* Order (1) Setting Litigation Deadlines and (2) Setting Continued Status Conference for June 11, 2019, at 10:00 a.m. [Doc. No. 13] at ¶ 1 ("Defendant has timely demanded a jury trial in this avoidance action, has not filed a proof of claim against the estate, and consents to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."). Because both Plaintiff and Defendant have consented to the Bankruptcy Court's entry of final

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CONT... QUIGG LA11, LLC

Chapter 7

judgment, the jury trial will be conducted by the Bankruptcy Court. *See* Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only with the consent of all parties). Defendant is not allowed to withdraw its consent to the Bankruptcy Court's entry of a final judgment at this stage of the proceedings.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) The Trustee shall submit an order assigning the matter to formal mediation by no later than **June 25, 2019**.
- 3) A continued Status Conference shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report, which should report on the progress of mediation, shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference. The Trustee shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Cook Development Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By

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Tuesday, June 11, 2019

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CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapte v. Hankey Capital, LLC, a

#24.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#25.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01411 Elissa D. Miller, solely in her capacity as chapte v. Mumford

#26.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01411. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Scott Mumford. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Post-Petition Transfers, (3) Preservation of Preferential and Post-Petition Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr. 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Scott Mumford

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01412 Elissa D. Miller, solely in her capacity as chapte v. Danmar Steel, Inc., a

#27.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01412. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Danmar Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Danmar Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapte v. JSA Engineering, Inc., a

#28.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01414 Elissa D. Miller, solely in her capacity as chapte v. B&R Construction, Inc., a

#29.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01414. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against B&R Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 21, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

B&R Construction, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01416 Elissa D. Miller, solely in her capacity as chapte v. J.M.I. Steel, Inc., a

#30.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01416. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against J.M.I. Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

J.M.I. Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01417 Elissa D. Miller, solely in her capacity as chapte v. JC Drywall Designs, Inc.,

#31.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01417. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JC Drywall Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

Tentative Ruling:

6/10/2019

See Cal. No. 9, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JC Drywall Designs, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
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Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01419 Elissa D. Miller, solely in her capacity as chapte v. Acosta Stone, an

#32.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01419. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Acosta Stone, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Acosta Stone, an unknown business

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Hearing Room 1568

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01420 Elissa D. Miller, solely in her capacity as chapte v. Vista General

#33.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01420. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Vista General Engineering Company, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

3/18/2019

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Vista General Engineering

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
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CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian

#34.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Kim, Christian)

fr. 4-23-19

Docket 1

Tentative Ruling:

6/10/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Right to Attach Order and Writ of Attachment [Doc. No. 47] (the "Motion")
- 2) Opposition to Motion by Trustee for Right to Attach Order [Doc. No. 49] (the "Opposition")
- 3) Trustee's Reply to Herstel Reihanian's Opposition to Motion for Right to Attach Order and Writ of Attachment [Doc. No. 53] (the "Reply")

I. Facts and Summary of Pleadings

Sharp Edge Enterprises (the "Debtor") filed a voluntary Chapter 7 petition on March 13, 2017 (the "Petition Date"). On August 22, 2018, the Chapter 7 Trustee (the "Trustee") filed a *First Amended Complaint: (1) For Breach of Oral Contract; (2) For Turnover of Property to the Estate; (3) Common Counts: Open Book Account; (4) Common Counts: Account Stated; and (5) To Avoid and Recover Fraudulent Transfers* [Doc. No. 10] (the "Complaint") against Leon Reihanian and Abraham Reihanian, as trustee of the Abraham Reinhanian and Nosrad Yahid Revocable Trust (UAD July 18, 2011) (the "Trust").

On April 23, 2019, the Court conducted a hearing on the *Motion to Appoint Guardian Ad Litem* [Doc. No. 37] (the "Motion") filed by the Chapter 7 Trustee (the

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"Trustee"). Prior to the hearing, the Court issued a tentative ruling [Doc. No. 44] (the "Tentative Ruling") stating that it was prepared to grant the request of Herstel Reihanian ("Herstel") [Note 1] to serve as the guardian ad litem of Abraham Reihanian ("Abraham"), but only if Herstel could demonstrate that he had sufficient resources to retain counsel to assist him in representing Abraham's interests. The Court explained that absent the assistance of counsel, Herstel could not adequately fulfill his obligations as Abraham's guardian. The Court ordered Herstel to appear at the hearing to address whether he had the ability to retain counsel to represent Abraham throughout the entirety of this proceeding. The Court stated that if Herstel could not demonstrate the ability to retain counsel on Abraham's behalf, it was prepared to appoint Leon Reihanian ("Leon"), who is presently represented by counsel, as Abraham's guardian.

Herstel failed to appear at the hearing as ordered by the Court. Consequently, the Court denied Herstel's request to serve as Abraham's guardian. Instead, the Court appointed Leon to serve as Abraham's guardian ad litem. The Court ordered Abraham, in his capacity as trustee of the Trust, to respond to the Complaint by no later than May 14, 2019. Abraham has not responded to the Complaint.

The material allegations of the Complaint are as follows:

- 1) On December 31, 2016, the Debtor and Leon entered into an oral agreement, whereby the Debtor would loan Leon \$158,890 without any deadline for repayment (the "Agreement"). At the end of the 2016 tax year, Leon owed the Debtor \$158,890 on account of the Agreement (the "Unpaid Loan").
- 2) As of the Petition Date, the Unpaid Loan had not been repaid to the Debtor. Because no deadline for repayment under the Agreement was set, the Unpaid Loan was due upon demand as a matter of law. No demand for the repayment of the Unpaid Loan was made until the filing of this Complaint. By failing to repay the Unpaid Loan, Leon has materially breached the Agreement with the Debtor.
- 3) On July 25, 2011, Leon transferred his 50% interest in the property located at 141 Great Circle, Mill Valley, CA 94941 (the "Real Property") to Abraham and Nosrad Yahid for no consideration. On July 24, 2012, Abraham and Nosrad Yahid transferred their individual title ownership interest in the Real Property to the Trust for no consideration. On December 3, 2015, Abraham caused the Trust to transfer a 25% interest in

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the Property to Leon for no consideration.

As against Leon, the Complaint seeks to recover \$158,890 in funds allegedly loaned by the Debtor to Leon. As against Leon and the Abraham, in his capacity as trustee of the Trust, the Complaint seeks to avoid and recover the transfer of real property located at 141 Great Circle, Mill Valley, CA 94941 (the “Real Property”) pursuant to §§ 544(b) and 550.

The Trustee moves for issuance of a writ of attachment against Leon. The Trustee seeks to attach Leon’s assets, including the Real Property. The Trustee asserts that he is likely to prevail upon his claims against Leon for repayment of the Unpaid Loan.

Leon did not file an opposition to the Motion. Herstel filed an opposition to the Motion. Herstel asserts that he has standing to oppose the Motion because he is a beneficiary of the Trust. Herstel contends that the grant deed purporting to transfer the Real Property to Leon from the Trust was invalid because it was executed by a party who lacked authority to act on behalf of the Trust. Herstel contends that the Trustee has not established that he is likely to prevail on his claims to recover assets from the Trust, and therefore cannot attach the Real Property. Herstel further contends that the order appointing Leon as Abraham’s guardian ad litem was not proper under California law.

In reply to Herstel’s opposition, the Trustee asserts that the opposition lacks proper evidentiary support, including any evidence that Herstel is the beneficiary of the Trust or that the 2015 transfer of the Real Property from the Trust to Leon was ineffective. The Trustee asserts that Herstel’s argument that Leon should not be appointed as guardian ad litem should have been raised in connection with the prior motion.

II. Findings and Conclusions

A. The Motion is Denied

Under Civil Rule 64, state law prejudgment remedies are available “for the seizure of property to secure satisfaction of a judgment ultimately entered.” *Blastrac, N.A. v. Concrete Sols. & Supply*, 678 F. Supp. 2d 1001, 1004 (C.D. Cal. 2010). California law provides for the prejudgment remedy of attachment:

‘Attachment is an ancillary or provisional remedy to aid in the collection of a *money demand* by seizure of property *in advance of trial and judgment.*’ (*Doyka v. Superior Court* (1991) 233 Cal.App.3d 1134, 1137, 285

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Cal.Rptr. 14.) California's Attachment Law (Code Civ. Proc., § 482.010 et seq.) is purely statutory and **675 is strictly construed. (*Bank of America v. Salinas Nissan, Inc.* (1989) 207 Cal.App.3d 260, 270, 254 Cal.Rptr. 748.) As germane here, a plaintiff seeking a right to attach order must show “‘the probable validity’ ” of its claim. (*Id.* at p. 271, 254 Cal.Rptr. 748.) “A claim has ‘probable validity’ where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.” (§ 481.190.)

Kemp Bros. Constr. v. Titan Elec. Corp., 146 Cal. App. 4th 1474, 1476, 53 Cal. Rptr. 3d 673, 674–75 (2007).

A court must find all of the following before issuing a writ of attachment:

- 1) the claim upon which the attachment is based is one upon which an attachment may be issued;
- 2) the plaintiff has established the probable validity of the claim upon which the attachment is based;
- 3) the attachment is not sought for a purpose other than recovery of the claim upon which the attachment is based; and
- 4) the amount to be secured by the attachment is greater than zero.

Blastrac, N.A. v. Concrete Sols. & Supply, 678 F. Supp. 2d 1001, 1005 (C.D. Cal. 2010).

Attachment is “a harsh remedy because it causes the defendant to lose control of his property before the plaintiff’s claim is adjudicated.” *Martin v. Aboyan*, 148 Cal.App.3d 826, 831, 196 Cal.Rptr. 266 (1983). Consequently, “the requirements for the issuance of a writ of attachment are strictly construed against the applicant.”

Blastrac, 678 F.Supp.2d at 1004. As stated by the *Blastrac* court:

In order to establish the “probable validity” component, the plaintiff must show it is more likely than not that it will obtain a judgment against the defendant. Cal.Civ.Proc.Code § 481.190; *see also Pos–A–Traction*, 112 F.Supp.2d at 1182. “In determining the probable validity of a claim where the defendant makes an appearance, the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.” *Loeb & Loeb*, 166 Cal.App.3d at 1120, 212 Cal.Rptr. 830. Thus, it is not enough for the plaintiff to make out a prima

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facie case for breach of contract; rather, the plaintiff must also show that the defenses raised are “less than fifty percent likely to succeed.” *Pet Food Express, Ltd. v. Royal Canin USA Inc.*, 2009 WL 2252108, at *5 (N.D.Cal.2009). If an applicant fails to rebut a factually-supported defense that would defeat its claims, the applicant has not established probable validity.

Blastrac, 678 F. Supp. 2d 1001, 1005 (C.D. Cal. 2010).

Here, the Trustee presents bank records showing that the Debtor transferred \$173,150 to Leon between January 1, 2016 and March 12, 2017. To substantiate his claim that the transfers were a loan from the Debtor to Leon, the Trustee points to Leon’s tax return, which provides that Leon received total income from the Debtor of only \$26,000 during 2016. The Trustee acknowledges that Leon has produced in discovery a second 2016 tax return, which purports to show that the funds transferred from the Debtor to Leon were used to reduce the Debtor’s liabilities on its line of credit. The Trustee asserts that this second tax return is fraudulent, because it lists a filing date of February 21, 2017, exactly one day after the previously produced tax return was filed.

The Trustee has not shown that it is more likely than not that he will prevail on his claims against Leon. The Agreement under which the Debtor loaned Leon funds was not reduced to writing. To prevail upon his claims, the Trustee is required not only to show that Leon received funds from the Debtor; he is also required to establish the terms of the Agreement. Specifically, the Trustee must show that the Agreement provided that the Unpaid Loan was repayable upon the Debtor’s demand. As the Agreement has not been reduced to writing, the Trustee will be required to rely upon circumstantial evidence to establish its terms. If Leon contests the Trustee’s characterization of the Agreement, which is likely, the Court will be required to assess Leon’s credibility to ascertain the terms of the Agreement.

Based upon the second tax return, it appears that Leon will take the position that the transfers he received from the Debtor were not a loan payable upon demand, but rather were used to reduce the Debtor’s liabilities on its line of credit. The Trustee can prevail only if he shows that the the transfers were a loan payable upon demand rather than a mechanism to reduce the Debtor’s liabilities.

Since the Trustee’s case will depend heavily upon credibility determinations that require the Court to assess witness testimony, the Court cannot find at this time that it is more likely than not that the Trustee will prevail upon his claims. In reaching this conclusion, the Court emphasizes that “the requirements for the issuance of a writ of

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attachment are strictly construed against the applicant,” *Blastrac*, 678 F.Supp.2d at 1004, because prejudgment attachment is a “harsh remedy,” *Martin*, 148 Cal.App.3d at 831.

B. Litigation Deadlines

After Leon was appointed as Abraham’s guardian ad litem, the Court ordered the Trustee and Leon to file a stipulation to set aside Abraham’s default, in his capacity as trustee of the Trust, by no later than April 30, 2019. The most recent Status Report provides that the Trustee has repeatedly sought to obtain the stipulation but that Leon has not yet provided it. Leon is **ORDERED** to provide a signed stipulation by no later than **June 18, 2019**. In his capacity as Abraham’s guardian ad litem, Leon is **FURTHER ORDERED** to cause Abraham to answer the Complaint by no later than **June 25, 2019**. Leon’s continued failure to comply with the Court’s orders will result in the imposition of sanctions as deemed appropriate by the Court.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) As set forth above, the Trust shall Answer the Complaint by no later than **June 25, 2019**.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **9/12/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/24/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/23/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/11/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel’s responsibility to check the Judge’s self-scheduling dates, posted on the Court’s website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-scheduling, the deadline for hearings on expert discovery motions is the next closest date which is available for self-scheduling.)
 - e) The last day for dispositive motions to be heard is **2/18/2020**. (If the motion cutoff date is not available for self-scheduling, the deadline for

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- dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/22/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/10/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the

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- requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **3/23/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order and an order denying the Motion. The Trustee shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Given names are used to distinguish family members with the same surname.

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

**United States Bankruptcy Court
Central District of California
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CONT... Sharp Edge Enterprises

Chapter 7

Defendant(s):

Leon Reihanian

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#35.00 Status Hearing RE: [27] Amended Complaint Trustee's First Amended Complaint for Interpleader by Sonia Singh on behalf of Brad D Krasnoff (TR), Brad D. Krasnoff, Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) filed by Plaintiff Brad D. Krasnoff, Chapter 7 Trustee). (Singh, Sonia)

Docket 27

Tentative Ruling:

6/10/2019

Hearing VACATED. This adversary proceeding has been voluntarily dismissed pursuant to Civil Rule 41. Doc. No. 41.

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
-----------------------------------	-------------------------------

Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se

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CONT... Golden Diamond International Inc. Chapter 7

Yellowstone Capital West Pro Se

Rapid Capital Funding II, LLC Pro Se

Corporation Service Company, as Pro Se

CT Corporation System as Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR) Represented By
Sonia Singh

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10:00 AM

2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

#36.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01234. Complaint by Maground, GmbH against Roberto Kai Hegeler. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Barsness, Christopher)

FR. 12-18-18

Docket 1

Tentative Ruling:

6/10/2019

On March 1, 2018, Plaintiff commenced a complaint against the Debtor/Defendant in the United States District Court for the Central District of California (the "District Court"), asserting claims for trademark infringement pursuant to 15 U.S.C. §§1114 and 1125(a), trademark dilution pursuant to 15 U.S.C. §1125(c), unfair competition and false advertising pursuant to 15 U.S.C. §1125(a), cybersquatting pursuant to 15 U.S.C. §1125(d), common law trademark infringement, breach of contract, conversion, and violations of Cal. Bus. & Prof. Code §§14247, 17200, and 17500 (the "District Court Action") (Case No. 2:18-cv-01760-CJC-JC). On April 23, 2018, Debtor/Defendant filed a voluntary Chapter 7 petition. On May 4, 2018, the District Court stayed the District Court Action pending resolution of Debtor/Defendant's bankruptcy proceeding.

On July 23, 2018, Plaintiff commenced the instant non-dischargeability action against Debtor/Defendant in the Bankruptcy Court (the "Non-Dischargeability Action"). As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether the Defendant is indebted to the Plaintiff; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001). Here, the Dischargeability Action alleges that the indebtedness which Plaintiff had sought to establish by way of the District Court Action should be

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CONT... Roberto Kai Hegeler

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excepted from Debtor/Defendant's discharge pursuant to 11 U.S.C. §§523(a)(2)(A), (a)(4), and (a)(6).

On December 17, 2018, the Court entered an order (1) *sua sponte* lifting the automatic stay to permit the District Court Action to proceed and (2) staying the Non-Dischargeability Action until entry of a final, non-appealable judgment in the District Court Action. Doc. No. 19 (the "Stay Order"). The Stay Order provided:

The most efficient way to resolve the Non-Dischargeability Action is for Plaintiff to first prosecute the District Court Action to final judgment. In the event Plaintiff obtains judgment in its favor, Plaintiff may then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is dischargeable. The District Court is better equipped than this Court to determine whether Defendant is indebted to Plaintiff on account of the allegations for trademark infringement, trademark dilution, and cybersquatting, all of which require the application of substantive non-bankruptcy law.

Stay Order at ¶ 3.

A review of the docket in the District Court Action indicates that Plaintiff has taken no action to prosecute the District Court Action subsequent to entry of the Stay Order. In addition, Plaintiff has failed to file a Status Report, notwithstanding the Court's entry of an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Status Conference* [Doc. No. 21] warning that the failure to file a Status Report would result in the imposition of sanctions.

By separate order, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.

The Court will prepare and enter the Order to Show Cause.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Roberto Kai Hegeler

Chapter 7

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Pro Se

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01097 Goodrich v. Phillips et al

#37.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01097. Complaint by David M Goodrich against Paul Phillips, Jeff Bonyun, Scott Strasser, Soames Floweree, Eion Hu, Yongjae Kim, Kevin Barenblat, Jeffrey Rhodes, OBI Acquisition, LLC, a Delaware limited liability company, OBI Soda, LLC, a Delaware limited liability company, MB Growth Advisors Corporation, a Nevada corporation. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(81 (Subordination of claim or interest)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica)

Docket 1

***** VACATED *** REASON: CONTINUED 7-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Paul Phillips	Pro Se
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Jeff Bonyun	Pro Se
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Scott Strasser	Pro Se
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Soames Floweree	Pro Se
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Eion Hu	Pro Se
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Yongjae Kim	Pro Se
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Kevin Barenblat	Pro Se
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Jeffrey Rhodes	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... OBI Probiotic Soda LLC Chapter 7

OBI Acquisition, LLC, a Delaware Pro Se

OBI Soda, LLC, a Delaware limited Pro Se

MB Growth Advisors Corporation, a Pro Se

DOES 1-25 Pro Se

Plaintiff(s):

David M Goodrich

Represented By
Jessica L Bagdanov

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:18-22393 Sharon R Williams

Chapter 7

Adv#: 2:19-01050 Miller v. Hancox

#38.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01050. Complaint by Elissa D. Miller against Donnell Hancox. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Simons, Larry)

fr. 5-14-19

Docket 1

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on April 1, 2019. On May 7, 2019, the Court approved a stipulation setting aside Defendant's default. On May 8, 2019, Defendant filed an Answer to the Complaint.

Having reviewed the Joint Status Report filed by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Because Defendant's Answer was filed only recently, the litigation deadlines previously ordered are continued, as follows:
 - a) The last day to amend pleadings and/or join other parties is **7/11/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not

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10:00 AM

CONT...

Sharon R Williams

Chapter 7

- available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of

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10:00 AM

CONT...

Sharon R Williams

Chapter 7

Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) Plaintiff has requested that the matter not be assigned to mediation until after the parties have had an opportunity to conduct discovery. Therefore, the Court will not assign the matter to formal mediation at this time.
- 3) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** A Joint Status Report, which should discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing. If by the time of the continued Status Conference it does not appear that the parties have engaged in meaningful settlement discussions, the Court will order the matter to formal mediation.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Sharon R Williams

Chapter 7

Debtor(s):

Sharon R Williams Pro Se

Defendant(s):

Donnell Hancox Pro Se

Plaintiff(s):

Elissa D. Miller Represented By
Larry D Simons

Trustee(s):

Elissa Miller (TR) Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:18-22399 Dorothy Victoria Long

Chapter 7

Adv#: 2:19-01086 United States Trustee for the Central District of v. Long

#39.00 Status Hearing RE: [1] Adversary case 2:19-ap-01086. Complaint by United States Trustee (LA) against Dorothy Victoria Long. (Fee Not Required). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Summons and Notice of Status Conference) Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Morrison, Kelly)

Docket 1

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on April 29, 2019. Defendant filed an Answer to the Complaint on May 24, 2019. Defendant has not moved to set aside the default. For the reasons set forth below, the Court will *sua sponte* set aside the default.

Civil Rule 55(c) provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

Here, none of the factors apply, so it is appropriate for the Court to set aside the default in order to avoid unnecessary costs and delay. First, no prejudice inures to Plaintiff. Merely being required to litigate the merits of a claim does not qualify as prejudice. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001). Second, Defendant may have a meritorious defense. Defendant's burden with respect to this factor is "not extraordinarily heavy"; Defendant is required only to allege

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CONT... Dorothy Victoria Long

Chapter 7

sufficient facts to constitute a defense. *TCI Grp.*, 244 F.3d at 700. By filing an Answer that denies the Complaint's operative allegations, Defendant has satisfied this factor. Third, there is no indication that Defendant's brief delay in answering the Complaint was culpable. "[A] defendant's conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). Filing an Answer approximately 25 days after the entry of default is not devious or in bad faith.

Having reviewed the Joint Status Report filed by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Because Defendant's Answer was filed only recently, the litigation deadlines previously ordered are continued, as follows:
 - a) The last day to amend pleadings and/or join other parties is **9/12/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/24/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/23/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/11/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **2/18/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/22/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/10/2020 at 11:00 a.m.** By no later than

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10:00 AM

CONT...

Dorothy Victoria Long

Chapter 7

fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **3/23/2020**. The trial day commences at 9:00

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10:00 AM

CONT...

Dorothy Victoria Long

Chapter 7

a.m. The exact date of the trial will be set at the Pretrial Conference.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit an order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dorothy Victoria Long	Pro Se
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Defendant(s):

Dorothy Victoria Long	Pro Se
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Plaintiff(s):

United States Trustee for the Central	Represented By Kelly L Morrison
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Trustee(s):

Brad D Krasnoff (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

#40.00 Status HearingRE: [1] Adversary case 2:19-ap-01085. Complaint by MERCHANTS ACQUISITION GROUP LLC against Paul Carrasco. false pretenses, false representation, actual fraud)) (Snyder, Richard)

Docket 1

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on May 2, 2019. Doc. No. 15. Having reviewed Plaintiff's Unilateral Status Report, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **July 11, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

CONT... Paul A. Carrasco

Chapter 7

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul Carrasco

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:19-10095 Jorge Villalobos Aguirre

Chapter 7

Adv#: 2:19-01099 SECURITY FIRST BANK v. AGUIRRE

#41.00 Status HearingRE: [1] Adversary case 2:19-ap-01099. Complaint by SECURITY FIRST BANK against JORGE VILLALOBOS AGUIRRE. false pretenses, false representation, actual fraud)) (Dunning, Donald)

Docket 1

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on May 2, 2019. Doc. No. 15. Having reviewed Plaintiff's Unilateral Status Report, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **July 11, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Jorge Villalobos Aguirre

Chapter 7

Debtor(s):

Jorge Villalobos Aguirre

Represented By
Giovanni Orantes

Defendant(s):

JORGE VILLALOBOS AGUIRRE

Pro Se

Plaintiff(s):

SECURITY FIRST BANK

Represented By
Donald T Dunning

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:19-15372 MG Express Car Wash Inc.

Chapter 7

#42.00 Show Cause Hearing
RE [5] **Why This Case Should Not Be Dismissed Based Upon Debtor's Lack Of Representation By Counsel**

Docket 1

Tentative Ruling:

6/10/2019

Debtor has failed to respond to the Order to Show Cause. The case is DISMISSED. The previously granted relief from stay shall not be effected by this dismissal.

Pleadings Filed and Reviewed:

- 1) Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Based Upon Debtor's Lack of Representation By Counsel [Doc. No. 5] (the "Order to Show Cause")
 - a) BNC Certificate of Notice [Doc. No. 11]

I. Facts and Summary of Pleadings

MG Express Carwash, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on May 8, 2019. The Debtor is not represented by counsel. On May 9, 2019, the Court issued an *Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Based Upon Debtor's Lack of Representation By Counsel* [Doc. No. 5] (the "Order to Show Cause"). Debtor has not responded to the Order to Show Cause.

II. Findings and Conclusions

"[A] corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). The requirement that corporate entities be represented by counsel is reiterated in Local Bankruptcy Rule ("LBR") 9011-2(a). Debtor has been provided an opportunity to retain counsel to prosecute this Chapter 11 case but has failed to do so. The case is DISMISSED. The Court will not dismiss the case until the motion for stay relief filed by Diamond Property Management, Inc. has been resolved.

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Hearing Room 1568

10:00 AM

CONT... MG Express Car Wash Inc.

Chapter 7

The Court will prepare and enter an order dismissing the case.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

MG Express Car Wash Inc.	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#43.00

POST CONFIRMATION status conference re [121] FIRST
AMENDED Confirmation of chapter 11 plan

f. 7-25-12; 9-12-12; . 12-11-12; 2-27-13; 7-17-13; 8-21-13; 2-18-14; 5-7-14;
8-6-14; 2-17-15; 2-19-15; 2-16-16; 2-7-17; 6-13-17; 12-12-17; **6-6-18; 6-20-18**

Docket 0

Tentative Ruling:

6/10/2019

Appearances required. At the last post confirmation status conference, the Court directed the Debtor to file a status report by no later than 14 days prior to the continued hearing, or by May 28, 2019. On May 29, 2019, the Court issued an Order to Comply [Doc. No. 221] noting the Debtor's failure to timely file a post-confirmation status report and directing the Debtor to file the required status report by no later than June 4, 2019. The Order to Comply cautioned that if the Debtor failed to file the Status Report by the June 4, 2019 deadline, the Court would consider whether to convert or dismiss the case at the June 11, 2019 status conference.

As of the preparation of this tentative ruling, the Debtor has not complied with the Order to Comply.

Therefore, the Debtor is directed to appear and show cause why this case should not be converted or dismissed pursuant to 11 U.S.C. § 1112(b)(4)(E).

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno
Alexandre I Cornelius
Jeffrey Lee Costell

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#44.00 Status HearingRE: [1] Adversary case 2:19-ap-01079. Complaint by Sergio Lopez Miranda against BANK OF AMERICA NATIONAL ASSOCIATION. (Charge To Estate). (Attachments: # 1 Supplement Summons) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Akintimoye, David)

Docket 1

Tentative Ruling:

6/10/2019

No appearances required.

On May 16, 2019, the Court entered an order providing that Defendant's *Motion to Dismiss* [Doc. No. 9] (the "Motion") would be treated as a motion for summary judgment. To provide the parties an opportunity to submit additional evidence, the Court continued the hearing on the Motion to July 10, 2019.

This Status Conference is CONTINUED to **July 10, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on the Motion. The parties are not required to submit an additional Status Report.

The Court will prepare and enter an order setting the continued Status Conference.

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

BANK OF AMERICA NATIONAL

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Sergio Miranda

Chapter 11

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Sergio Lopez Miranda

Represented By
David A Akintimoye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#45.00 Status Hearing
RE: [1] Postconfirmation Status Conference

fr. 10-17-18; 1-15-19

Docket 1

Tentative Ruling:

6/10/2019

On June 18, 2018, the Court entered an order confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Plan"). The Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of the estate. (The Plan provided that all assets of the estate remained vested in the estate. *See* Plan at Art. 3.)

The Plan Administrator has made four distributions to holders of allowed claims. Funds distributed to date exceed \$6 million.

Having reviewed the *Third Post-Confirmation Status Report*, the Court finds that the Plan Administrator is making sufficient progress toward effectuating the Plan. A continued Status Conference shall take place on **December 10, 2019, at 10:00 a.m.** The Plan Administrator shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#46.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18; 11-13-18; 1-15-19; 4-16-19

Docket 0

Tentative Ruling:

6/10/2019

Plaintiffs have reached an agreement with Liberty Asset Management Corporation and Oak River Asset Management and no longer seek to pursue their claims against any of the remaining defendants. Plaintiffs have filed a motion to dismiss the action as to all remaining defendants.

A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiffs shall file a Status Report by no later than fourteen days prior to the hearing. In the event the action has been dismissed as to all defendants, the continued Status Conference will go off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

HANDING HOLDING	Pro Se
TLH REO MANAGEMENT LLC	Pro Se
BRADBURY FURLONG LLC	Pro Se
OAK RIVER ASSET	Pro Se
LIBERTY ASSET MANAGEMENT	Represented By Jeffrey S Kwong David B Golubchik John-Patrick M Fritz Eve H Karasik
PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

RICHBEST HOLDING LLC	Pro Se
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
YCJS 2012 LLC	Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

David S Henshaw

AHA 2012 LLC

Represented By
David S Henshaw

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:19-01077 Sharp v. Wright et al

#47.00 Status HearingRE: [1] Adversary case 2:19-ap-01077. Complaint by Bradley Sharp against Merle D. Wright, Patricia S. Wright & Bradford W. Wright. priority or extent of lien or other interest in property)) (Greenwood, Gail)

Docket 1

Tentative Ruling:

6/10/2019

Hearing VACATED. On June 5, 2019, the Court entered default judgment in favor of Plaintiff. Doc. No. 24.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Merle D Wright

Pro Se

Patricia S Wright

Pro Se

Bradford W Wright

Pro Se

Plaintiff(s):

Bradley Sharp

Represented By
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#48.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-16-19

Docket 1

Tentative Ruling:

6/10/2019

The Court set litigation deadlines in connection with the previous Status Conference. Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) No additional Status Conferences will held absent further order of the Court. Upon application of either party, the Court will consider setting a further Status Conference if it will assist in the resolution of the action.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#49.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19; 4-16-19

Docket 1

Tentative Ruling:

6/10/2019

The Court set litigation deadlines in connection with the previous Status Conference. The parties represent that they are in the process of documenting a settlement of this action. Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) A continued Status Conference to monitor consummation of the settlement shall be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#50.00 Hearing
RE: [47] Motion for Right to Attach Order and Writ of Attachment; Memorandum of Points and Authorities; Declaration of Christian T. Kim in Support Thereof (Kim, Christian)

Docket 47

Tentative Ruling:

6/10/2019

See Cal. No. 34, above, incorporated in full by reference.

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Represented By
Raymond H. Aver

DOES 1-20, inclusive

Pro Se

Abraham Reihanian, as Trustee of

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

10:00 AM

CONT... Sharp Edge Enterprises

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#100.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-12-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se
Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his	Represented By Thomas J Eastmond
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Trustee(s):

John J Menchaca (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

FR. 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:18-15427 Francisco R. Gomez

Chapter 7

Adv#: 2:18-01251 Great Northern Insurance Company, a Corporation v. Gomez

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01251. Complaint by Great Northern Insurance Company, a Corporation against Francisco R. Gomez. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Garwacki, Ray)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 4-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco R. Gomez

Represented By
Mark La Rosa

Defendant(s):

Francisco R. Gomez

Pro Se

Joint Debtor(s):

Claudia E. Gomez

Represented By
Mark La Rosa

Plaintiff(s):

Great Northern Insurance Company,

Represented By
Ray Garwacki
Ray Garwacki Jr

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01260. Complaint by Joseph Amin against Kami Emein. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Berke, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-16-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Pro Se

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:18-21680 Rosio Cabrera

Chapter 7

#104.00 Hearing
RE: [23] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Maria Sepulveda; request for 110(j)(3) injunction for failure to comply with turnover order (Maroko, Ron)

Docket 23

***** VACATED *** REASON: WITHDRAWAL FILED 5-31-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosio Cabrera

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#105.00 Hearing
RE: [775] Motion for order confirming chapter 11 plan Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr. and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service

fr. 4-10-19

Docket 775

***** VACATED *** REASON: CONTINUED 7-9-19 AT 11:00 A.M.**

Tentative Ruling:

4/9/2019

Hearing required. If no resolution of the Valensi Rose administrative claim issue is reached prior to the confirmation hearing, the Court would be inclined to send the matter to mediation. A consensual resolution would allow the plan to be confirmed and successfully end this nearly 7 year saga.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#106.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18; 11-13-18; 3-12-19; 5-14-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-13-19 AT 11:00 A.M.**

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Raviner Kuma Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

days, to allow him to investigate the facts of this action, and potentially substitute in as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 11, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#107.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

FR. 3-12-19

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11027 Helen Cardoza

Chapter 7

#1.00 Reaffirmation Hearing Date SetRE: [7] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Auto

Docket 7

Party Information

Debtor(s):

Helen Cardoza

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11488 Veronica Gutierrez

Chapter 7

#2.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and Southland Credit Union

Docket 9

Party Information

Debtor(s):

Veronica Gutierrez

Represented By
Lauren M Foley

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11640 Alexander C. Diamonds

Chapter 7

#3.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 9

Party Information

Debtor(s):

Alexander C. Diamonds

Represented By
Christine A Kingston

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11750 Douglas Ernesto Soriano-Garcia

Chapter 7

#4.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 9

Party Information

Debtor(s):

Douglas Ernesto Soriano-Garcia

Represented By
Hale Andrew Antico

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11753 Ann Marie Luddy

Chapter 7

#5.00 Reaffirmation Hearing Date SetRE: [12] Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.

Docket 12

Party Information

Debtor(s):

Ann Marie Luddy

Represented By
Kenneth H J Henjum

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11859 Miryan L Paredes

Chapter 7

#6.00 Reaffirmation Hearing Date Set RE: [13] Pro se Reaffirmation Agreement Between Debtor and Logix Federal Credit Union

Docket 13

Party Information

Debtor(s):

Miryan L Paredes

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-11955 Jose Carlos Orduno Leyva

Chapter 7

#7.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union

Docket 11

Party Information

Debtor(s):

Jose Carlos Orduno Leyva

Represented By
Lauren M Foley

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12040 Francisco Cruz and Eva Cruz

Chapter 7

#8.00 Reaffirmation Hearing Date Set RE: [14] Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC (2016 Ford Edge)

Docket 14

Party Information

Debtor(s):

Francisco Cruz

Pro Se

Joint Debtor(s):

Eva Cruz

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12228 David Gomez and Nicole Ann Gomez

Chapter 7

#9.00 Reaffirmation Hearing Date Set
RE: [11] Pro se Reaffirmation Agreement Between Debtor and Cab West, LLC
(2017 Ford Explorer)

Docket 11

***** VACATED *** REASON: Order Entered 5-15-2019 Granting
Reaffirmation Agreement [Doc. No. 15]**

Party Information

Debtor(s):

David Gomez

Represented By
Michael E Clark

Joint Debtor(s):

Nicole Ann Gomez

Represented By
Michael E Clark

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12237 Olivia Salcido

Chapter 7

#10.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Auto

Docket 11

Party Information

Debtor(s):

Olivia Salcido

Represented By
Diana K Zilko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12376 Tawny C Leslie

Chapter 7

#11.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 9

Party Information

Debtor(s):

Tawny C Leslie

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12376 Tawny C Leslie

Chapter 7

#12.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 10

Party Information

Debtor(s):

Tawny C Leslie

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12409 Jose Antonio Arriaga and Olivia Arriaga

Chapter 7

#13.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 11

Party Information

Debtor(s):

Jose Antonio Arriaga Pro Se

Joint Debtor(s):

Olivia Arriaga Pro Se

Trustee(s):

Heide Kurtz (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12514 Manuel Antonio Bonilla

Chapter 7

#14.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and Mechanics Bank

Docket 9

Party Information

Debtor(s):

Manuel Antonio Bonilla

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12614 Ilori Baoying Wu

Chapter 7

#15.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and BMW Bank of North America

Docket 10

Party Information

Debtor(s):

Ilori Baoying Wu

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12614 Ilori Baoying Wu

Chapter 7

#16.00 Reaffirmation Hearing Date Set
RE: [10] Pro se Reaffirmation Agreement Between Debtor and BMW Bank of North America

Docket 10

***** VACATED *** REASON: DUPLICATE OF CALENDAR NO. 15**

Party Information

Debtor(s):

Ilori Baoying Wu

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12637 Karen L Rauda

Chapter 7

#17.00 Reaffirmation Hearing Date Set RE: [8] Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.

Docket 8

Party Information

Debtor(s):

Karen L Rauda

Represented By
David S Hagen

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12674 Samantha Hendrix

Chapter 7

#18.00 Reaffirmation Hearing Date Set RE: [11] Reaffirmation Agreement Between Debtor and Hyundai Motor Finance

Docket 11

Party Information

Debtor(s):

Samantha Hendrix

Represented By
Barry E Borowitz

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12800 Ashley Breann Canal

Chapter 7

#19.00 Reaffirmation Hearing Date Set RE: [8] Reaffirmation Agreement Between Debtor and CarMax Auto Finance

Docket 8

Party Information

Debtor(s):

Ashley Breann Canal

Represented By
Tina H Trinh

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1539 Calendar**

Wednesday, June 12, 2019

Hearing Room 1539

10:00 AM

2:19-12867 Payam Shams

Chapter 7

#20.00 Reaffirmation Hearing Date SetRE: [8] Motion for Approval of Reaffirmation Agreement with Bank of America, N.A.

Docket 8

Party Information

Debtor(s):

Payam Shams

Represented By
Peter M Lively

Trustee(s):

Elissa Miller (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13008 Marisol Hernandez

Chapter 7

#21.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and Pentagon Federal Credit Union

Docket 10

Party Information

Debtor(s):

Marisol Hernandez

Represented By
Daniel King
David N LeGrande

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13008 Marisol Hernandez

Chapter 7

#22.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Pentagon Federal Credit Union

Docket 11

Party Information

Debtor(s):

Marisol Hernandez

Represented By
Daniel King
David N LeGrande

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13280 Gabriel Gurrola-Garcia

Chapter 7

#23.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 10

Party Information

Debtor(s):

Gabriel Gurrola-Garcia

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13434 Juan Gilberto Cubias

Chapter 7

#24.00 Reaffirmation Hearing Date SetRE: [10] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 10

Party Information

Debtor(s):

Juan Gilberto Cubias

Represented By
Sevag Nigoghosian

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13452 Lizzette Esquer

Chapter 7

#25.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union

Docket 8

Party Information

Debtor(s):

Lizzette Esquer

Represented By
Michael H Colmenares

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13522 Maricela V Bastida

Chapter 7

#26.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 11

Party Information

Debtor(s):

Maricela V Bastida

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13777 Alma Delia Lopez

Chapter 7

#27.00 Reaffirmation Hearing Date Set RE: [7] Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union

Docket 7

Party Information

Debtor(s):

Alma Delia Lopez

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-14015 Jose Luis Juarez-Escalante

Chapter 7

#28.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Fifth Third Bank (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Jose Luis Juarez-Escalante

Represented By
Michael H Colmenares

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13363 Sergio F Lopez Sandoval and Rocio Anabel Lopez

Chapter 7

#29.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and Twenty-One-Eighty-Five

Docket 10

Party Information

Debtor(s):

Sergio F Lopez Sandoval

Represented By
Marlin Branstetter

Joint Debtor(s):

Rocio Anabel Lopez

Represented By
Marlin Branstetter

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-13026 Leslie Alison Maldonado

Chapter 7

#30.00 Reaffirmation Hearing Date SetRE: [10] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 10

Party Information

Debtor(s):

Leslie Alison Maldonado

Represented By
Nicholas W Gebelt

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12012 Sharon Lynette Parker

Chapter 7

#31.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 9

Party Information

Debtor(s):

Sharon Lynette Parker

Represented By
William J Smyth

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-12012 Sharon Lynette Parker

Chapter 7

#32.00 Reaffirmation Hearing Date Set
RE: [9] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 9

*** VACATED *** REASON: DUPLICATE OF CALENDAR NO. 31

Party Information

Debtor(s):

Sharon Lynette Parker

Represented By
William J Smyth

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-14031 Fernando Melendrez-Sanchez and Horalia Melendrez

Chapter 7

#33.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 9

Party Information

Debtor(s):

Fernando Melendrez-Sanchez

Represented By
Michael H Colmenares

Joint Debtor(s):

Horalia Melendrez

Represented By
Michael H Colmenares

Trustee(s):

John J Menchaca (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 12, 2019

Hearing Room 1568

10:00 AM

2:19-14514 Stephanie Argueta

Chapter 7

#34.00 Reaffirmation Hearing Date Set RE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Stephanie Argueta

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:15-20664 Route 66 Marine LLC

Chapter 7

#1.00 APPLICANT: Trustee: Sam S. Leslie

Hearing re [68] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/11/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,118.20

Total Expenses: \$3,068.03

Stan Lucas: \$6,590.32 [Per Proof of Claim No. 9-1]

Franchise Tax Board: \$6,141.87 [Per Proof of Claim No. 12-3]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Route 66 Marine LLC

Represented By
Roland H Kedikian

Trustee(s):

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

CONT... Route 66 Marine LLC
Sam S Leslie (TR)

Represented By
Toan B Chung

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:15-20664 Route 66 Marine LLC

Chapter 7

#2.00 APPLICANT: Attorney for Trustee: Roquemore, Pringle & Moore, Inc.

Hearing re [68] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/11/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$29,827 approved, but payment shall be limited to \$21,966.28 per Trustee's request [*See* Doc. No. 68]

Expenses: \$981.46 approved, but payment shall be limited to \$722.80 per Trustee's request [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Route 66 Marine LLC

Represented By
Roland H Kedikian

Trustee(s):

Sam S Leslie (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

CONT... Route 66 Marine LLC

Toan B Chung

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:15-20664 Route 66 Marine LLC

Chapter 7

#3.00 APPLICANT: Accountant for Trustee: LEA Accountancy, LLP

Hearing re [68] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/11/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$32,802.50 approved, but payment shall be limited to \$24,157.60 per Trustee's request [*See* Doc. No. 68]

Expenses: \$226.23 approved, but payment shall be limited to \$166.61 per Trustee's request [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Route 66 Marine LLC

Represented By
Roland H Kedikian

Trustee(s):

Sam S Leslie (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

CONT... Route 66 Marine LLC

Toan B Chung

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:15-20664 Route 66 Marine LLC

Chapter 7

#4.00 APPLICANT: Other: Stan Lucas

Hearing re [68] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/11/2019

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Route 66 Marine LLC

Represented By
Roland H Kedikian

Trustee(s):

Sam S Leslie (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:15-20664 Route 66 Marine LLC

Chapter 7

#5.00 Other: Franchise Tax Board

Hearing re [68] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/11/2019

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Route 66 Marine LLC

Represented By
Roland H Kedikian

Trustee(s):

Sam S Leslie (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:19-12321 Lawrence Parks

Chapter 7

#6.00 Show Cause Hearing re [10] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

Tentative Ruling:

6/12/2019

Hearing VACATED. This case was dismissed on May 30, 2019 based on the Debtor's failure to appear at the Section 341(a) meeting of creditors. Doc. No. 18.

Party Information

Debtor(s):

Lawrence Parks

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#7.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18;
8-14-18; 2-12-19

Docket 0

Tentative Ruling:

6/11/2019

No appearances are required. This is a post-confirmation status conference. Based upon the Court's review of the Reorganized Debtor's Post-Confirmation Status Conference Report [Doc. No. 346], the Court CONTINUES the status conference to September 18, 2019 at 10:00 a.m.. A further post-confirmation status report is due 14 days prior to the hearing.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

2/11/2019

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

CONT... Sondra Derderian

Chapter 11

Tentative Ruling: Appearances required.

Pleadings Filed and Reviewed

1. Reorganized Debtor's Post Confirmation Status Conference Report [Doc. No. 327]
2. Reorganized Debtor's Post Confirmation Status Conference Report [Doc. No. 331]

This is a post-confirmation status conference. On August 3, 2018, Debtor filed a post-confirmation status report stating that she was working to resolve certain accounting issues with respect to Class 3 secured creditor Ocwen Loan Servicing [Doc. No. 327] (the "August 2018 Report"). Debtor stated that if she were able to successfully resolve those issues, she would seek entry of a final decree closing this case, but if she were unsuccessful at resolving those issues, she would move the Court for an order requiring compliance under the confirmed plan. *Id.* Based on those representations, the Court continued the post-confirmation status conference to February 12, 2019.

On February 1, 2019, Debtor filed a post-confirmation status report [Doc. No. 331] (the "February 2019 Report"). However, the February 2019 Report appears to be identical to the August 2018 Report and does not provide any update on what efforts the Debtor has undertaken in the past six months to resolve her dispute with Ocwen Loan Servicing. Furthermore, the Court notes that on February 5, 2019, Debtor's counsel filed a motion to withdraw as counsel [Doc. No. 333] and scheduled a hearing for March 5, 2019.

Accordingly, Debtor's counsel is directed to appear to provide this Court with an update on the status of the accounting issues with Ocwen Loan Servicing. Failure to appear may result in this Court dismissing this case without further notice or hearing for failure to appear in proper prosecution.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

CONT...

Sondra Derderian

Ryan A Stubbe

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing
RE: [1980] Application for Administrative Expenses (Valentine, Cecelia)

FR. 4-24-19; 5-8-19; 6-5-19

Docket 1980

***** VACATED *** REASON: CONTINUED 7-23-19 AT 10:00 A.M.**

Tentative Ruling:

5/7/2019

No appearances required. The Court has approved the parties' stipulation to continue this hearing to **June 5, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#9.00 HearingRE: [57] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Trustee's Notice of Motion and Motion to (1) Approve Settlement Agreement, (2) Confirm Sale of Real Property Commonly Known as 2160 Century Park East #812, Los Angeles, California Free and Clear of Liens and Claims, and (3) Pay Real Estate Brokers' Commissions; Memorandum of Points and Authorities, Declarations of Carolyn A. Dye and Zizi Pak, and Request for Judicial Notice in Support Thereof with Proof of Service. (Attachments: # 1 Exhibit # 2 Proof of Service) (D'Alba, Michael)

Docket 57

Tentative Ruling:

6/17/2019

For the reasons set forth below, the Settlement Agreement is APPROVED and the Sale Motion is GRANTED.

Key Sale Terms:

- 1) Proposed purchaser: Daniel Sion Sakhai
- 2) Property for Sale: 2160 Century Park East, Unit 812, Los Angeles, CA
- 3) Purchase price: \$912,000
- 4) Overbids: The initial overbid shall be \$920,000. Subsequent overbids shall be in increments of \$10,000. **[Note 1]**

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion to (1) Approve Settlement Agreement, (2) Confirm Sale of Real Property Commonly Known as 2160 Century Park East # 812, Los Angeles, California Free and Clear of Liens and Claims, and (3) Pay Real Estate Brokers' Commissions [Doc. No. 57] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 58]
 - b) Notice of Sale of Estate Property [Doc. No. 59]
 - c) Notice of Errata Re: Sale Motion [Doc. No. 62]
- 2) Response to Motion to Sell [filed by Wells Fargo Bank, NA] [Doc. No. 61]
- 3) Stipulation to Avoid and Preserve Judgment Lien of Melissa Nouraie and Parissa Nouraie [Doc. No. 63]

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10:00 AM

CONT... **Fatemeh V. Mahdavi**

Chapter 7

I. Facts and Summary of Pleadings

Fatemeh Mahdavi (the "Debtor") filed a voluntary Chapter 7 petition on May 22, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell real property located at 2160 Century Park East, Unit 812, Los Angeles, CA (the "Property"). The Trustee also seeks approval of a settlement agreement resolving a title dispute as to the Property.

The Title Dispute and Proposed Settlement

James De Arruda ("De Arruda") claims that he and the Debtor held title to the Property as joint tenants, but that De Arruda was defrauded into transferring his 50% interest in the Property to the Debtor's spouse in connection with a proposed refinancing. On January 5, 2018 (prior to the commencement of the bankruptcy petition), De Arruda filed an action in the Los Angeles Superior Court (the "State Court"), seeking a judgment confirming his alleged 50% interest in the Property. De Arruda recorded a notice of lis pendens (the "Lis Pendens") against the Property. On August 20, 2018, De Arruda removed the State Court Action to the Bankruptcy Court. The Trustee disputes that there was any fraud in connection with the refinancing transaction and contends that Property is property of the Debtor's bankruptcy estate in its entirety. De Arruda also filed a Proof of Claim in the amount of \$1,668,660.24, related to alleged embezzlement by the Debtor's spouse.

The material terms of the proposed settlement agreement (the "Settlement Agreement") between the Trustee and De Arruda are as follows:

- 1) The Trustee will sell the Property free and clear of the Lis Pendens.
- 2) De Arruda will waive his interest in the Property and dismiss the State Court Action that was removed to the Bankruptcy Court.
- 3) The net sale proceeds of the Property will be distributed 30% to De Arruda and 70% to the Trustee.
- 4) De Arruda's Proof of Claim will be allowed in the amount of \$1 million, subject to De Arruda providing a suitable declaration to the Trustee regarding the subject matter of the claim.

The Proposed Sale

The Trustee seeks authorization to sell the Property free and clear of liens, claims, and encumbrances, pursuant to §§ 363(b) and (f). The Trustee proposes the following

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CONT... Fatemeh V. Mahdavi

Chapter 7

treatment of the liens and encumbrances against the Property:

- 1) **Lien for real property taxes for fiscal year 2018–2019 (the "Property Tax Lien")**. The Trustee has paid all real property taxes accrued prior to the date of closing. The sale will be free and clear of this lien.
- 2) **Lien held by Century Park East Homeowners' Association (the "HOA")**. The Trustee will pay through escrow undisputed amounts owed to HOA. Specifically, the Trustee will pay to the HOA \$24,905.52 on account of a retrofit special assessment, \$17,146.97 on account of a regular assessment, \$838.13 on account of a supplemental assessment, and \$1,075 on account of management company fees. The total to be paid to the HOA through escrow is approximately \$45,000. To the extent that the Trustee does not pay disputed amounts to the HOA, the HOA's lien shall attach to the bankruptcy estate's 70% of the net sale proceeds to the same extent, and with the same validity and priority, as such lien had prior to the sale.
- 3) **Deed of Trust in favor of Wells Fargo Bank, N.A., securing original indebtedness of \$367,500 (the "Wells Fargo DOT")**. The Trustee will pay through escrow all undisputed amounts owed on the Wells Fargo DOT. The sale will be free and clear of the Wells Fargo DOT.
- 4) **Notice of Pendency of Action recorded by De Arruda (the "Lis Pendens")**. Pursuant to the Settlement Agreement, the Lis Pendens will be withdrawn.
- 5) **Tax lien recorded by the State of California Franchise Tax Board on May 4, 2018, in the amount of \$232,310.89 (the "FTB Lien")**. The FTB Lien is against James De Arruda and Lillian Tanaka. Pursuant to the Settlement Agreement, De Arruda is deemed to have waived his interest in the Property. The Settlement Agreement further provides that any effort by the FTB to assert that the FTB Lien attaches to the sales proceeds, including the sales proceeds distributed to De Arruda, will not affect the Settlement Agreement's validity. The sale will be free and clear of the FTB Lien.
- 6) **Judgment lien in the amount of \$1,289,722.22 in favor of Davoud Gharehbaghi and Iliad Ashraf Por (the "Gharehbaghi Judgment")**. As to the Property, the Gharehbaghi Judgment was deemed avoided and preserved for the bankruptcy estate pursuant to a carve-out agreement approved by the Court on January 9, 2019. Doc. No. 50. Therefore, the sale will be free and clear of the Gharehbaghi Judgment.
- 7) **Judgment lien in the amount of \$754,265.74 in favor of Melissa Nouraie**

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CONT...

Fatemeh V. Mahdavi

Chapter 7

and Parissa Nourai (the "Nourai Judgment"). The sale will be free and clear of the Nourai Judgment. On June 14, 2019, the Trustee and the holders of the Nourai Judgment filed a stipulation (the "Nourai Stipulation"), which provides that the Nourai Judgment is deemed avoided pursuant to § 547 and preserved for the benefit of the bankruptcy estate pursuant to § 551.

- 8) **Tax lien recorded by the Internal Revenue Service in the amount of \$446,899.19 (the "IRS Lien")**. The IRS Lien is against James De Arruda and Lillian Tanaka. Pursuant to the Settlement Agreement, De Arruda is deemed to have waived his interest in the Property. The Settlement Agreement further provides that any effort by the IRS to assert that the IRS Lien attaches to the sales proceeds, including the sales proceeds distributed to De Arruda, will not affect the Settlement Agreement's validity. The sale will be free and clear of the IRS Lien.
- 9) **Lien for property taxes recorded by the Los Angeles County Tax Collector in the amount of \$127.73 (the "LA Tax Lien")**. The sale will be free and clear of this lien, because it was recorded subsequent to the filing of the petition in violation of the automatic stay and is therefore void *ab initio*.

Wells Fargo Bank, N.A. ("Wells Fargo") does not oppose the Sale Motion, provided that its lien is paid in full. Wells Fargo requests that the Trustee be required to close the sale and pay Wells Fargo within ninety days of entry of the order approving the Sale Motion (such order, the "Sale Order"). Wells Fargo requests that the Sale Order contain the following language:

The loan secured by a first lien on real property located at 2160 Century Park East, #812, Los Angeles, CA 90067 will be paid in full as of the date of the closing of the sale and the sale will be conducted through escrow and based on a non-expired contractual payoff statement received directly from Wells Fargo Bank N.A.

No opposition to the Sale Motion is on file.

II. Findings and Conclusions

A. The Settlement Agreement is Approved

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed

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settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The legal issues posed by the litigation—whether fraud occurred in connection with the refinancing of the Property—are not particularly complex. However, Alireza Mahdavi, the Debtor's spouse, is the only witness who could confirm or deny De Arruda's allegations regarding the refinancing transaction. Alireza Mahdavi is incarcerated in Iran, meaning that obtaining his testimony would be expensive and complicated, if not impossible.

Paramount Interests of Creditors

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement facilitates the sale of the Property, which will yield approximately \$251,666 for the estate. No creditors have objected to approval of the Settlement Agreement. Absent approval, the significant litigation costs incurred by the estate would reduce creditors' ultimate recovery.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. As discussed above, absent approval of the Settlement Agreement the estate would be required to incur significant litigation costs. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result

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obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Difficulties in the Matter of Collection

This factor does not apply.

B. The Proposed Sale is Approved

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Court approves the Trustee's proposed treatment of the liens and encumbrances against the Property, and finds that the Property may be sold free and clear of such liens and encumbrances as requested by the Trustee. Pursuant to § 363(f) (3), the sale is free and clear of the Property Tax Liens, the Wells Fargo DOT, and the liens asserted by the HOA, because the purchase price of the Property exceeds the aggregate value of such liens. Pursuant to § 363(f)(2), the sale is free and clear of the IRS Lien and FTB Lien. The IRS and FTB are deemed to have consented to the sale because they received notice of the Sale Motion and did not file an opposition. The sale is free and clear of the LA Tax Lien because such lien is void *ab initio*, having

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been recorded in violation of the automatic stay. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992). The sale is free and clear of the Lis Pendens because the Lis Pendens will be withdrawn pursuant to the Settlement Agreement. The sale is free and clear of the Gharehbaghi Judgment because that judgment has been avoided and preserved for the benefit of the estate pursuant to a carve-out agreement approved by the Court. *See* Doc. No. 50. The sale is free and clear of the Nouraié Judgment, which has been deemed avoided pursuant to § 547 and has been preserved for the benefit of the bankruptcy estate pursuant to § 551, in accordance with the terms of the Nouraié Stipulation.

The Trustee is authorized to pay real estate brokers' commissions directly from escrow. Having reviewed the Declaration of Zizi Pak, the real estate broker who marketed the Property, the Court finds that proposed buyer Daniel Sion Sakhai is a good faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

The language requested by Wells Fargo is appropriate and should be included in the Sale Order.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$920,000, with subsequent overbids to be increments of \$10,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Sale Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Note 1

The Court has modified the overbid amounts requested by the Trustee.

Party Information

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Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-15272 Trisha L. Hanson

Chapter 7

#10.00 Hearing
RE: [7] Motion to compel trustee to abandon interest in property of estate /Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts); Declarations of Pardis Akhavan and Trisha L. Hanson in Support Thereof (with Proof of Service)

fr. 6-4-19

Docket 7

Tentative Ruling:

6/17/2019

For the reasons set forth below, the Motion to Compel Abandonment is GRANTED.

Pleadings Filed and Reviewed

1. Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts) [Doc. No. 7] (the "Motion to Compel Abandonment")
2. Notice of Motion for Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts) [Doc. No. 8]
3. Notice of Continued Hearing on Debtor's Motion to Compel Abandonment of Personal Property (Bank Accounts) [Doc. No. 15]
4. Chapter 7 Trustee's Report of No Distribution [Doc. No. 18]
5. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Trisha L. Hanson (the "Debtor") filed this voluntary chapter 7 case on May 6, 2019 (the "Petition Date"). Shortly thereafter Timothy Yoo was appointed and continues to serve as the acting chapter 7 trustee (the "Trustee").

On May 9, 2019, the Debtor filed a motion under § 554(b) for an order compelling the Trustee to abandon the estate's interest in approximately \$7,615.65 in funds being

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Trisha L. Hanson

Chapter 7

held in four bank accounts held in the Debtor and her minor daughter's names at Wells Fargo, bearing account numbers ending in 8457, 6478, 8431 and 6854 (collectively, the "Bank Accounts"), which are presently frozen. **[Note 1]** The Debtor asserts that cause exists to compel abandonment of the Bank Accounts because she properly disclosed the Bank Accounts on Schedule B and claimed them fully exempt on Schedule C. Accordingly, the Debtor argues that the Bank Accounts are of inconsequential value to the bankruptcy estate and the Trustee should be compelled to abandon the Bank Accounts because the Debtor needs the funds for the ongoing care of her three minor children and herself.

The Debtor states that she attempted to informally resolve the situation with the Trustee prior to filing the Motion to Compel Abandonment by requesting that the Trustee instruct Wells Fargo to release the funds. However, the Debtor understand that the Trustee is unwilling to release the funds until after the initial § 341(a) Meeting of Creditors, which is presently scheduled for June 13, 2019. Therefore, the Debtor brought this motion due to the extreme hardship that her family will suffer without more immediate access to these funds.

The matter was continued to June 18, 2019, to allow time for the Debtor to be examined at the § 341(a) Meeting of Creditors and to afford the Trustee further opportunity to weigh in on the allowability of the Debtor's exemption following examination of the Debtor.

On June 17, 2019, the Trustee filed a Report of No. Distribution [Doc. No. 18].

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 554(b) states:

On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. 554(b).

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CONT...

Trisha L. Hanson

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In view of the Trustee's Report of No. Distribution, the Court finds that the Bank Accounts are of inconsequential value and benefit to the estate. Therefore, the Motion to Compel Abandonment is GRANTED.

The Debtor is directed to lodge a proposed order, incorporating this tentative ruling, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor states the account ending in 8431 is held jointly in the name of the Debtor and her minor daughter. The Debtor also identifies a fifth bank account, ending in 2144, which the Debtor states is also held jointly in the name of the Debtor and her daughter, but the Debtor does not appear to be seeking an order compelling the Trustee's abandonment of this account.

Party Information

Debtor(s):

Trisha L. Hanson

Represented By
Matthew D. Resnik

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, June 18, 2019

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#100.00 Hearing
RE: [511] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

fr. 4-16-19

Docket 511

Tentative Ruling:

6/17/2019

Appearances required. The parties must provide an update on the status of the amended 2017 Tax Returns.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 511] (the "Motion")
- 2) Opposition to Motion to Convert, Dismiss or Appoint a Chapter 11 Trustee Filed by the Office of the United States Trustee [filed by the Plan Administrator for Liberty Asset Management Corporation] [Doc. No. 517]
 - a) Declaration of Bradley D. Sharp in Support of Opposition to Motion to Convert, Dismiss or Appoint a Chapter 11 Trustee Filed by the Office of the United States Trustee [Doc. No. 518]

I. Facts and Summary of Pleadings

On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Doc. No. 478] (the "Approval Order"). The Approval Order provides that the structured dismissal of the Debtor's Chapter 11 will occur through a two-step process:

- 1) First, within ten days of entry of the Approval Order, the Debtor shall set aside the sum of \$3 million (the "Reserve Fund"), to be maintained in the client-trust

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CONT...

Crystal Waterfalls LLC

Chapter 11

account of the Debtor's counsel. The Reserve Fund shall be used to pay, among other claims, professional fees, sums owing on account of the Debtor's final tax returns, and outstanding fees owed to the UST. Approval Order at p. 4, ¶B.4.

- 2) Second, upon presentation of evidence by the Liberty Committee that various conditions precedent (the "Conditions Precedent") have been satisfied, the case shall be dismissed. *Id.* at p. 7, ¶H.d.

On February 7, 2019, the United States Trustee (the "UST") filed a motion seeking to dismiss the case, pursuant to § 1112(b) (the "Motion"). The hearing on the Motion was initially set for April 16, 2019, but was continued pursuant to a stipulation between the Debtor and the UST that was approved by the Court. The UST sought dismissal because more than seven months had passed since entry of the Approval Order, and because the Debtor was delinquent on quarterly fees and had not filed its December 2018 Monthly Operating Report.

On April 2, 2019, Bradley D. Sharp, the Plan Administrator under the Confirmed First Amended Chapter 11 Plan for Liberty Asset Management Corporation (the "Plan Administrator") filed an opposition to the Motion. The Plan Administrator states that the case should not be dismissed because one of the Conditions Precedent remains outstanding. Specifically, the Plan Administrator states that the Debtor is in the process of filing amended 2017 Tax Returns and obtaining a determination of liability under § 505.

II. Findings and Conclusions

The Court's review of the docket indicates that the Debtor has filed Monthly Operating Reports through March 2019. The Debtor's Monthly Operating Report for April 2019 was due on May 15, 2019 but has not yet been submitted. The Debtor's failure to timely file its Monthly Operating Reports is of serious concern to the Court. Timely submission of Monthly Operating Reports is essential so that the UST and interested parties can ensure that the Debtor is fulfilling its fiduciary obligations to creditors. If the Debtor's pattern of failing to timely submit its Monthly Operating Reports continues, the Court will consider imposing monetary sanctions upon the Debtor's counsel.

The Court cannot determine from a review of the docket whether the Debtor is current on UST quarterly fees.

On April 5, 2019, the Court entered an order approving the stipulated continuance

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CONT... Crystal Waterfalls LLC

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of the hearing on the Motion. *See* Doc. No. 522 (the "Continuance Order"). Since entry of the Continuance Order, no additional papers have been filed. The parties shall appear to provide the Court an update regarding the status of the 2017 Tax Returns.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

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Hearing Room 1568

11:00 AM

2:19-10379 Adrienne Marcia Moore

Chapter 11

#101.00 HearingRE: [27] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy)) **WARNING:** Matter is not on calendar for 6-26-19 at 11:00 A.M. See docket entry # [28] for corrective action; Modified on 5/13/2019 (Evangelista, Maria).

Docket 27

Tentative Ruling:

6/12/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED and the case is DISMISSED with a 180-day refile bar.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 27] (the "Motion to Dismiss")
2. Amended Notice of Hearing Re: United States Trustee's Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 29]
3. Notice of Motion to Dismiss [Doc. No. 31]
4. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Adrienne Marcia Moore (the "Debtor") filed this voluntary chapter 11 case on January 15, 2019 (the "Petition Date"). The Office of the United States Trustee (the "UST") seeks an order dismissing this case with a 180-day refile bar based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed;
- ii. Debtor has failed to:
 - a. File an application to employ counsel

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11:00 AM

CONT...

Adrienne Marcia Moore

Chapter 11

- b. Provide sufficient evidence of the Debtor's closing of all pre-petition bank accounts, including closing bank statements;
- c. File a projected cash flow statement for the first ninety (90) days of operation under chapter 11;
- d. File a statement of major issues and timetable report;
- e. File monthly operating reports ("MORs") for February, March, April and May 2019; and
- f. Pay quarterly fees for the 1st quarter of 2019 (2nd quarter fees continue to accrue).

See Declaration of Gary Baddin.

The UST also highlights that this is the Debtor's sixth bankruptcy filing since 2012 and four of the five cases were dismissed. [Note 1] Based on the foregoing, the UST asserts that cause exists under § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case. The UST has reviewed the Debtor's Schedules and recommends that the case be dismissed because there do not appear to be any assets for a trustee to administer and contends that the Debtor's history of bankruptcy filings merits a 180-day refiling bar.

As of the date of this tentative ruling, no opposition is on file. [Note 2]

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they

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Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

11:00 AM

CONT... Adrienne Marcia Moore

Chapter 11

arise, and to use its equitable powers to reach an appropriate result in individual cases." *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

In this case, the Court finds that the list of deficiencies detailed above provides ample "cause" within the meaning of § 1112(b) to convert, dismiss or appoint a chapter 11 trustee in this case. The Court further finds that the Debtor's history of prior bankruptcy filings and the lack of any meaningful progress in this case since the Petition Date supports a finding that the Debtor filed this case in bad faith.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

Based on a review of the Debtor's Schedules, the Court agrees that there does not appear to be any unencumbered assets that a chapter 7 trustee could administer for the benefit of creditors. Therefore, the Court believes that dismissal is in the best interest of creditors. The Court further finds that dismissal with a 180-day refiling bar is appropriate given the Debtor's serial bankruptcy filings and the Court's determination that the Debtor filed this case in bad faith.

III. Conclusion

For the reasons set forth above, the Motion to Dismiss is GRANTED and the case is DISMISSED with a 180-day refiling bar.

The UST is directed to upload a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

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CONT... Adrienne Marcia Moore

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: See *In re Adrienne M. Moore*, Case No. 2:11-bk-15209-ER, Chapter 13 case dismissed for failure to file information; *In re Adrienne M. Moore*, Case No. 2:11-bk-20883-VZ, Chapter 13 case dismissed with a refiling bar for failure to appear for 341(a) examination; *In re Adrienne Marcia Moore*, Case No. 2:12-bk-10343-RN, Chapter 7 case dismissed due to prohibition against being a debtor [Doc. No. 12]; *In re Adrienne Marcia Moore*, Case No. 2:12-bk-25817-RN, Chapter 7 case, chapter 7 discharge received 8/27/2012; *In re Adrienne Marcia Moore*, 2:18-bk-18584-WB, Chapter 13 case dismissed at confirmation hearing.

Note 2: Despite Debtor's failure to respond to the Motion to Dismiss, the Debtor filed February and March Monthly Operating Reports on June 7th and June 8th, 2019. See Doc. Nos 33 & 34. April and May Monthly Operating Reports remain outstanding.

Party Information

Debtor(s):

Adrienne Marcia Moore

Represented By
Shannon O.C. Nelson

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

11:00 AM

2:19-13797 Liboria Zavalza

Chapter 11

#102.00 HearingRE: [10] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 10

Tentative Ruling:

6/12/2019

Hearing required.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 18, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#103.00 Hearing
RE: [61] Motion to Reconsider (related documents 49 Order on Motion to
disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee (BNC-
PDF))

fr. 6-4-19

Docket 61

***** VACATED *** REASON: CONTINUED 7-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 19, 2019

Hearing Room 1568

10:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#0.00 Hearing
RE: [97] Confirmation of chapter 11 Plan

fr. 4-9-19

Docket 97

Tentative Ruling:

Amended after the hearing.

6/18/2019

For the reasons set forth below, CONTINUE HEARING to September 18, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Second Amended Chapter 11 Plan of Reorganization [Doc. No. 106] (the "Plan")
2. Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization [Doc. No. 107]
3. Order Granting Debtor's Motion for Approval of Adequacy of Debtor's First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Liquidation [Doc. No. 111]
4. Stipulation by Ally Financial Inc. and Andrew's & Sons Tradings, Inc. for Adequate Protection 362 Stay Resolving Motion for Relief from Automatic Stay, for Adequate Protection and Plan Treatment on Lien Secured by Ford Truck F650 [Doc. No. 72]
5. Order: (1) Approving Adequate Protection Stipulation and (2) Vacating Hearing on Motion for Relief From the Automatic Stay [Doc. No. 74]
6. Stipulation by Andrew's & Son Trading Inc. and Stipulation for Adequate Protection and Plan Treatment of Proof of Claim 5 Regarding Tesla Model S and Resolution of Motion for Relief From the Automatic Stay (Personal Property) Between Debtor and JPMorgan Chase Bank, N.A. [Doc. No. 79]
7. Order Granting Motion for Relief From the Automatic Stay Personal Property (Between Debtor and JP Morgan Chase Bank, N.A.) [Doc. No. 81]

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CONT... Andrew's & Son Tradings Inc. Chapter 11

8. Stipulation Between Debtor and First General Bank Re: Plan Treatment of Proof of Claim Numbers 10 and 11 [Doc. No. 109]
9. Order Stipulation Between Debtor and First General Bank Re: Plan Treatment of Proof of Claim Numbers 10 and 11 [Doc. No. 112]
10. Debtor's Notice of: (1) Deadline to Return Ballots; and (2) Hearing on Motion Regarding Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 113]
11. Proof of Service [Doc. No. 114]
12. Plan Ballot Summary [Doc. 118]
13. Notice of Motion and Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization Filed as of April 16, 2019
14. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Andrew's & Sons Tradings, Inc. dba Beston Shoes (the "Debtor"), filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). The Debtor now seeks confirmation of its *Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 106] (the "Plan").

Summary of the Plan

Class 1 – First General Bank – Accepts the Plan

Class 1 consists of the secured claim of First General Bank ("Loan 1"). First General Bank ("FGB") holds a first-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$110,894.08. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$1,155.25 for a period of twelve years. FGB will retain its lien until paid in full. FGB's claim is impaired and it voted to accept the Plan.

Class 2 – FGB – Accepts the Plan

Class 2 consists of the secured claim of FGB ("Loan 2"). FGB holds a second-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$73,991.14. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$863.40 for a period of ten years. FGB will retain its lien until paid in full. FGB's claim is impaired and it voted to accept the Plan.

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CONT... Andrew's & Son Tradings Inc.

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Class 3 – Amazon Capital Services, Inc. – No Ballot Cast

Class 3 consists of the secured claim of Amazon Capital Services, Inc. ("ACS"). ACS holds a third-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$477,488.27. The Debtor proposes to pay ACS in full, plus 5% interest, by making monthly payments of \$4,416 for a period of twelve years. ACS will retain its lien until paid in full. ACS's claim is impaired and ACS was entitled to vote on the Plan, but did not cast a ballot.

Class 4 – Kings Cash Group – No Ballot Cast

Class 4 consists of the secured claim of Kings Cash Group ("KCG"). KCG holds a fourth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$249,512.85. The Debtor proposes to treat KCG's claim as entirely unsecured and to pay KCG pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. KCG's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). KCG's claim is impaired and KCG was entitled to vote on the Plan, but did not cast a ballot.

Class 5 – EBF Partners, LLC dba Everest Business Funding and Corporation Services Company – No Ballot Cast

Class 5 consists of the secured claim of EBF Partners, LLC dba Everest Business Funding and Corporation Service Company ("EBF"). EBF holds a fifth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$246,734.40. The Debtor proposes to treat EBF's claim as entirely unsecured and to pay EBF pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. EBF's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). EBF's claim is impaired and EBF was entitled to vote on the Plan, but did not cast a ballot.

Class 6 – Ally Financial – Accepts the Plan

Class 6 consists of the secured claim of Ally Financial ("Ally"). Ally holds a secured lien against the Debtor's 2011 Ford Truck F650, which secures debt in the amount of \$20,178.97. On or about November 20, 2018, the Debtor entered into an adequate protection stipulation with Ally [See Doc. Nos. 72, 74]. The Debtor proposes to pay Ally in full, plus 5.5% interest, by making monthly payments of \$490 through November 1, 2022 or until the claim is paid in full. Ally will retain its lien

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CONT... Andrew's & Son Tradings Inc.

Chapter 11

until paid in full. Ally's claim is impaired and it voted to accept the Plan.

Class 7 – JP Morgan Chase Bank, N.A. – Accepts the Plan

Class 7 consists of the secured claim of JP Morgan Chase Bank, N.A. ("Chase"). Chase holds a secured lien against the Debtor's 2015 Tesla Model S, which secures debt in the amount of \$47,414.57. On or about January 7, 2019, the Debtor entered into an adequate protection stipulation with Chase [See Doc. Nos. 79, 81]. The Debtor proposes to pay Chase in full, plus 5% interest, by making monthly payments of \$895 for a period of 60 months, or until the claim is paid in full. Chase will retain its lien until paid in full. Chase's claim is impaired and it voted to accept the Plan.

Class 8 – Hong Kong Motors – No Ballot Cast

Class 8 consists of the secured claim of Hong Kong Motors ("HKM"). HKM holds a secured lien against the Debtor's 2007 Nissan Altima, which secures debt in the amount of \$4,500. The Debtor proposes to bifurcate HKM's claim into a secured claim of \$2,835 (which the Debtor states is the current value of the collateral) and an unsecured claim of \$1,665. The Debtor proposes to pay HKM's secured claim in full, plus 5% interest, by making monthly payments of \$53 for a period of 60 months. HKM will retain its lien, up to the value of the collateral, until the secured portion of its claim is paid in full. The Debtor proposes to pay HKM's unsecured claim pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. HKM's claim is impaired and HKM was entitled to vote on the Plan, but did not cast a ballot.

Class 8(b) – New Commercial Capital – Deemed to Reject the Plan

Class 8(b) consists of the secured claim of New Commercial Capital ("NCC"). NCC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that NCC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent NCC has a lien against any of the Debtor's assets, the Debtor proposes to strip NCC's lien as of the Effective Date. NCC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(c) – Corporation Service Company as Representative – Deemed to Reject the Plan

Class 8(c) consists of the secured claim of Corporation Service Company as

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Representative ("CSC"). CSC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that CSC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that CSC has a lien against any of the Debtor's assets, the Debtor proposes to strip CSC's lien as of the Effective Date. CSC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(d) – Bank of the West – Deemed to Reject the Plan

Class 8(d) consists of the secured claim of Bank of the West ("BoW"). BoW has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that BoW holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that BoW has a valid lien against any of the Debtor's assets, the Debtor proposes to strip BoW's lien as of the Effective Date. BoW will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(e) – Employment Development Department – Unimpaired (Deemed to Accept)

Class 8(e) consisted of the secured claim of Employment Development Department ("EDD"). EDD filed a proof of claim asserting entitlement to a distribution of \$47.18. The Debtor has already paid EDD's claim in full. Accordingly, EDD is not impaired, was not entitled to vote, and is deemed to accept the Plan.

Class 9 – General Unsecured Claims – Accepts the Plan

Class 9 consists of general unsecured claims ("GUC") totaling \$2,377,121. The Debtor proposes to pay \$47,542.42, which represents approximately 2% of the total GUC claims, by making pro rata monthly payments of \$792.37 for a period of five years. Class 9 is impaired and has voted to accept the Plan.

Class 10 – Equity Interests – Unimpaired (Deemed to Accept)

Class 10 consists of Jiazheng Lu's 100% equity interest in the Debtor. Mr. Lu is an insider. Under the Plan, Mr. Lu will retain 100% of his ownership interest in the Debtor. Mr. Lu's claim is not impaired and he was not entitled to vote on the Plan.

The Debtor estimates that it will have approximately \$60,622.83 in administrative claims on the Effective Date and submits that it has sufficient cash on hand to pay all

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allowed administrative claims in full as required.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A. Issues Preventing Confirmation of the Debtor's Plan at This Time

i. Several Classes Did Not Vote

Classes 3, 4, 5, and 8 are impaired classes that were entitled to vote, but did not cast ballots. Debtor argues that in the absence of any objection, these non-voting classes should be deemed to have accepted the Plan.

The Court acknowledges the split of authority regarding whether a non-voting, non-objecting, class of creditors is deemed to have accepted or rejected a plan. *See Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians)*, 103 B.R. 211 (B.A.P. 9th Cir. 1989) (members of a class must affirmatively vote in favor of the plan in order for that class to have accepted plan treatment); *compare Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.)*, 863 F.2d 1263 (10th Cir. 1988) (Non-voting, non-objecting creditor who is a member of a class that casts no votes is deemed to have accepted the plan of reorganization for purposes of section 1129(a)(8) and 1129(b)).

Plan proponents have dealt with the problem of a non-voting class by including prominent language in the Plan, Disclosure Statement and Plan Ballot providing that creditors who did not vote would be deemed to accept the plan. *See, e.g., In re Adelpia Communications*, 368 B.R. 140, 260-62 (Bankr. S.D.N.Y. 2007) ("Section 7.3 of the Plan adopts a presumption that '[i]f no holders of Claims or Equity Interests eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such Claims or Equity Interests in such Class.'... I overruled the ACC Bondholder Group's objection, and uphold the Plan presumption with respect to the non-voting creditors in these classes.").

Unfortunately, the Debtor did not include any such language in the Plan, Disclosure Statement or Ballot. In fact, the Debtor's Ballot expressly stated that

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Chapter 11

failure to return a timely ballot would result in the vote not being counted as either an acceptance or rejection of the Plan. *See* Confirmation Brief, Ex. 4.

Therefore, the Court finds it appropriate to reopen voting for non-voting Classes 3, 4, and 5 (the "Non-Voting Classes") and direct the Debtor to serve a supplemental notice to those classes and file a proof of service evidencing the same by no later than **June 26, 2019**, that: (i) notes that such classes previously received copies of the Debtor's solicitation package and have failed to timely return a ballot; (ii) unambiguously states that the deadline to submit a ballot has been extended to July 26, 2019, and notifies such classes that the failure to timely return a ballot by the July 26th deadline will be deemed acceptance of the Plan; and (iii) notifies creditors that additional copies of the solicitation package can be obtained by contacting Debtor's counsel.

In the event the Non-Voting Classes do not return ballots by the July 26, 2019 deadline, those classes will be deemed to have accepted the Plan and the Debtor will not be required to submit a supplemental confirmation brief addressing the issues raised below. However, if one or more of the Non-Voting Classes casts a ballot to reject the Plan, then the Court's concerns discussed below with respect to the Debtor's ability to cramdown the Plan on certain classes will necessitate a supplemental confirmation brief addressing those issues. In such case, the September 18, 2019 hearing will serve as a status conference and the Court will set a new confirmation date at that time.

ii. The Confirmation Brief Is Conclusory And Not Supported By Sufficient Evidence (applicable only if classes which previously did not return a ballot now return a ballot voting against the Plan.)

Unless the Court deems Debtor's non-voting, non-objecting, classes as having accepted the Plan, the Debtor has not satisfied § 1129(a)(8) and must therefore demonstrate that the Plan can be crammed down on those classes. However, the Court finds that the Confirmation Brief fails to adequately address certain issues or attach adequate evidence with respect to the following cram down issues:

1. Classes 1, 2, and 3 appear to be similarly situated secured creditors with claims secured by the same collateral, but the Debtor fails to address why the

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Chapter 11

- Plan does not unfairly discriminate against Class 3 by proposing to pay it only 5% interest when Classes 1 and 2 will receive 7.5% interest on their claims. Similarly, the Debtor has not provided any evidence to establish that the 5% interest rate will result in Class 3 receiving the present value of its claim.
2. The Plan proposes to avoid the secured liens held by claimants in Classes 4 and 5 on the basis that those liens are fully underwater, but the Debtor has not submitted evidence to show that it is entitled to strip off those liens pursuant to § 506(a)(1), because that section provides that "the value shall be determined in light of the purpose of the value and the proposed disposition or use of such property" which, in this case, requires some evidence of the Debtor's value as a going concern. **[Note 1]**
 3. The Debtor has not submitted evidence establishing that the 5% interest rate proposed for Class 8 will result in that class receiving the present value of its claim.

Accordingly, the Debtor is directed to submit a supplemental brief in support of confirmation of the Plan that addresses the foregoing issues by no later than August 19, 2019.

B. The Confirmation Brief's Discussion of Classes 8(b), 8(c), and 8(d) is Inadequate

The Plan proposes to avoid the secured liens held by the claimants in Classes 8(b), 8(c), and 8(d) and provides that those classes will not receive any distribution under the Plan on the basis that the Debtor cannot determine any loan or monies owed to those claimants and no proofs of claim have been filed. First, the Confirmation Brief appears to argue that these creditors should be deemed to have accepted the Plan because they did not cast ballots. However, as the Court specifically noted in its tentative ruling issued in advance of the Disclosure Statement hearing, the clear language of § 1126(g) necessitates a finding that these classes are deemed to reject the Plan.

Second, the Confirmation Brief states that the Plan can be crammed down on these Classes because they will receive the "indubitable equivalent" of their claims, but since the Plan does not provide for these claimants to either retain their liens or receive any distribution under the Plan, the Court cannot find that these claimants are

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receiving the "indubitable equivalent" of their claims.

Nevertheless, Court notes that although the Debtor did not schedule any of the claims in these classes as "disputed," "contingent," or "unliquidated," the Debtor did state that the amount of such claims was "unknown." Therefore, the holders of such claims were effectively on notice of the need to file proofs of claim. *See* Fed. R. Bankr. P. 3003(c)(2) (Any creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution). In the absence of any proofs of claim, the Court believes the more appropriate analysis is to hold that the Plan can be crammed down on Classes 8(b), 8(c), and 8(d) because they are not entitled to receive any distribution.

Since section 1126(g) mandates that Classes 8(b), 8(c) and 8(d) are deemed to reject the Plan, the Debtor is not required to serve these classes with notice of the Court's decision to reopen balloting. Although the Plan will not be consensual as to these classes, for the reasons stated above, the Plan can be crammed down on Classes 8(b), 8(c), and 8(d) and the Debtor is not required to submit further briefing with respect to these classes.

III. Conclusion

For the reasons set forth above, the Court is not in a position to confirm the Debtor's Plan at this time. The hearing is CONTINUED to September 18, 2019 at 10:00 a.m.

After the hearing, the Court will prepare a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Andrew's & Son Tradings Inc.

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: In view of the size and complexity of this case, the Court believes that this evidentiary burden would likely be satisfied by a declaration from the Debtor's principal or other qualified employee.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang
David Samuel Shevitz

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Central District of California
Los Angeles
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Wednesday, June 19, 2019

Hearing Room 1568

10:00 AM

2:17-17086 Allynce Inc

Chapter 7

#1.00 APPLICANT: Trustee: BRAD D. KRASNOFF

Hearing re [40] and [41] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,942.93

Total Expenses: \$88.54

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Allynce Inc

Represented By
Glenn Park

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:17-17086 Allynce Inc

Chapter 7

#2.00 APPLICANT: Accountant for Trustee: KARL T. ANDERSON, CPA, INC.

Hearing re [40] and [41] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,950

Expenses: \$228.04

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Allynce Inc

Represented By
Glenn Park

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, June 19, 2019

Hearing Room 1568

10:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#3.00 Hearing
RE: [38] Motion to Dismiss Adversary Proceeding

FR. 5-8-19

Docket 38

Tentative Ruling:

6/18/2019 (amended after hearing to provide that the court will prepare the mediation order).

The Motion to Dismiss is GRANTED IN PART and DENIED IN PART. The Motion is DENIED as to the claims under § 523(a)(2)(A) and (a)(6). The Motion is GRANTED as to the claims under § 727(a)(3) and (a)(4)(A), which are dismissed without leave to amend.

Pleadings Filed and Reviewed:

- 1) Complaint for Determination of Dischargeability and Objecting to Debtor's Discharge [Doc. No. 1] (the "Complaint")
- 2) Notice of Motion and Motion to Dismiss the Complaint for Failure to State a Claim Pursuant to FRCP 12(b)(6) [Doc. No. 38] (the "Motion")
- 3) Plaintiffs' Response in Opposition to Defendant Thomas Merino's Motion to Dismiss the Complaint [Doc. No. 45] (the "Opposition")
- 4) Thomas Merino Reply to Star R. Foreman Opposition to Motion to Dismiss [Doc. No. 46] (the "Reply")

I. Facts and Summary of Pleadings

On December 27, 2018, Star Rae Foreman ("Plaintiff") filed a *Complaint for Determination of Dischargeability and Objecting to Debtor's Discharge* [Doc. No. 1] (the "Complaint") against Thomas Ernesto Merino (the "Defendant"). Before Defendant sought bankruptcy protection, Plaintiff obtained a judgment against Defendant in the amount of \$10,114 in the small claims division of the Superior Court of the State of California (the "State Court Judgment"). The State Court Judgment

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resulted from Defendant renting to Plaintiff an unpermitted apartment unit. The instant Complaint seeks a determination that the indebtedness established by the State Court Judgment is excepted from Defendant's discharge pursuant to §§ 523(a)(a)(A) and (a)(6) as well as denial of Defendant's discharge pursuant to § 727(a)(3) and (a)(4)(A).

Defendant moves to dismiss the Complaint, for failure to state a claim upon which relief can be granted. Plaintiff opposes the Motion. Both parties are proceeding *in pro se*.

Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

Claims Under § 523(a)(2)(A) and (a)(6)

On July 1, 2016, Defendant rented to Plaintiff an apartment located at 1343 W 40th Place, Los Angeles, CA 90804 (the "Apartment"). Complaint at ¶ 13. Prior to execution of the rental agreement, Defendant represented to Plaintiff that the Apartment was in compliance with applicable codes and regulations. *Id.* at ¶ 12. Defendant did not disclose to Plaintiff that the Apartment was an unpermitted unit. *Id.*

The Apartment lacked a working furnace or a securable door, in violation of California law. *Id.* at ¶¶ 20–21. When Plaintiff demanded that Defendant bring the Apartment into compliance, Defendant refused, stating "You can name all the codes you want to, you still have to pay rent. If you don't like it leave." *Id.* at ¶ 16. While Plaintiff resided at the Apartment, Defendant accessed the Apartment without authorization and verbally threatened and harassed Plaintiff. *Id.* at ¶ 22. In April 2017, Defendant removed Plaintiff's personal property from the Apartment and destroyed it. *Id.* at ¶ 23.

On July 27, 2017, the City of Los Angeles (the "City") issued a Substandard Order against the Apartment. *Id.* at ¶ 27. The City determined that the Apartment was not permitted, contained hazardous electrical wiring, lacked adequate heating, was missing smoke alarms, and lacked carbon monoxide alarms. *Id.*

On August 21, 2017, the Housing and Community Investment Department of Los Angeles (the "HCIDLA") determined that Defendant was not entitled to demand rent for the Apartment because the Apartment was not properly registered and lacked a Certificate of Occupancy. *Id.* at ¶ 28.

On January 17, 2018, Plaintiff obtained a judgment against Defendant in the small claims division of the Superior Court of the State of California (the "State Court

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Judgment”) in the amount of \$10,114. *Id.* at ¶ 29. The State Court Judgment is non-dischargeable pursuant to § 523(a)(2)(A) and (a)(6).

Claims Under § 727(a)(3) and (a)(4)(A)

Defendant is currently married to Yvette Merino. Defendant has failed to disclose all marital assets to the Chapter 7 Trustee (the “Trustee”). *Id.* at ¶ 50. Pursuant to § 727(a)(3), Defendant is not entitled to a discharge. *Id.*

Defendant has knowingly and fraudulently made the following false statements in connection with his bankruptcy petition:

- 1) Defendant’s Statement of Financial Affairs (the “SOFA”) stated that his income in 2017 was \$2,000 per month. At the § 341(a) meeting, Defendant stated that the figure on the SOFA was not correct. *Id.* at ¶ 55. The SOFA provided that Defendant paid \$800 per month in rent. At the § 341(a) meeting, Defendant acknowledged that his monthly rental payments were less than \$800. *Id.* at ¶ 61.
- 2) Defendant stated at the § 341(a) meeting that he was legally separated from his spouse, when in fact Defendant and his spouse both lease an apartment located at 1620 N. Avon St., Burbank, CA 91505. *Id.* at ¶¶ 56 and 59. On his schedules, Defendant falsely stated that he lives at 1343 W. 40th Place, Los Angeles, CA 90037, when in fact he lives with his spouse in Burbank. *Id.* at ¶ 60.
- 3) Defendant failed to list in the SOFA information regarding businesses from which he had received income. *Id.* at ¶ 57.
- 4) At the § 341(a) meeting, Defendant initially stated that his spouse had no assets. Upon further questioning Defendant admitted that his spouse owned a vehicle. *Id.* at ¶ 58.
- 5) On his schedules, Defendant valued his vehicle at \$5,000. The vehicle is actually worth at least \$7,500. *Id.* at ¶ 62.
- 6) On his schedules, Defendant stated that the value of the electronics and furniture he owned was \$1,500. The value of these items is considerably higher. *Id.* at ¶ 63.
- 7) On his schedules, Defendant stated that he did not own a cell phone. At the § 341(a) meeting, Defendant acknowledged that he owned a cell phone. *Id.* at ¶ 65.
- 8) On his schedules, Defendant misrepresented the nature of the State Court

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Judgment that Plaintiff obtained against him. *Id.* at ¶ 64.

Pursuant to § 727(a)(4)(A), Defendant is not entitled to a discharge on account of these false statements.

Summary of Papers Filed in Connection with Defendant's Motion to Dismiss

Defendant asserts that the Complaint's allegations under § 523(a)(2)(A) and (a)(6) fail to state a claim upon which relief can be granted. With respect to the claims under § 523(a)(2)(A), Defendant argues that the State Court Judgment was entered against him based upon violations of landlord/tenant law. Defendant maintains that being found guilty of such violations does not establish liability under § 523(a)(2)(A). With respect to the claims under § 523(a)(6), Defendant argues that the Complaint fails to allege that Defendant acted with the intent of inflicting injury upon Plaintiff.

With respect to the claim under § 727(a)(3), Defendant denies that he concealed any assets. Defendant asserts that the Chapter 7 Trustee elected not to administer any assets after conducting a full examination. With respect to the claim under § 727(a)(4)(A), Defendant asserts that none of the alleged false statements were material.

In opposition, Plaintiff argues that Complaint's factual allegations state claims under § 523(a)(2)(A) and (a)(6) and § 727(a)(3) and (a)(4)(A). With respect to § 523(a)(2)(A), Plaintiff points to the allegations that Defendant falsely represented that the Apartment was compliant with applicable codes and regulations when inducing Plaintiff to rent the Apartment. With respect to § 523(a)(6), Plaintiff points to the allegation that Defendant seized and destroyed Plaintiff's personal property located at the Apartment.

With respect to § 727(a)(3), Plaintiff reiterates her allegation that Defendant has concealed his spouse's assets from the Trustee. Plaintiff presents a new allegation, not raised in the Complaint, that Defendant has concealed from the Trustee a third vehicle in the possession of Defendant's spouse.

With respect to § 727(a)(4)(A), Plaintiff reiterates the Complaint's allegations, and accuses Defendant of additional wrongdoing, such as supplying false addresses to taxing authorities.

In reply, Defendant moves to strike Plaintiff's opposition because it was filed two days late. Defendant further asserts that many of the facts alleged in the opposition are irrelevant.

II. Findings and Conclusions

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A. Defendant Has Waived Any Objections Regarding Lack of Proper Service of the Summons and Complaint

On March 7, 2019, the Court denied Plaintiff's motion for default judgment and ordered Plaintiff to obtain an alias summons and re-serve the Summons and Complaint upon the Defendant by no later than March 15, 2019. *See* Order (1) Denying Motion for Default Judgment, (2) Requiring Plaintiff to Obtain Another Summons By No Later than March 15, 2019, and (3) Vacating Status Conference Set for March 12, 2019, at 10:00 a.m. [Doc. No. 31]. Plaintiff failed to obtain an alias summons and failed to re-serve the Summons and Complaint as ordered by the Court.

In the Motion to Dismiss, Defendant has not objected to Plaintiff's failure to properly serve the Summons and Complaint. Civil Rule 12(h)(1)(B) provides that the defense of insufficient service of process is waived if not presented in a pre-answer motion to dismiss. Defendant has waived his ability to object to Plaintiff's failure to properly serve the Summons and Complaint. By filing the Motion to Dismiss without asserting an objection as to service of process, Defendant has consented to the Court's jurisdiction.

B. The Court Declines to Strike Plaintiff's Opposition to the Motion

Plaintiff filed her Opposition to the Motion two days late, on June 7, 2019, rather than June 5, 2019. The Court declines to strike the Opposition, as requested by the Defendant. Defendant's ability to submit a Reply was not unduly prejudiced by Plaintiff's slight delay in filing the Opposition.

C. In Adjudicating the Motion to Dismiss, the Court Declines to Consider Matters Extraneous to the Complaint

Both Plaintiff and Defendant have presented for the Court's consideration matters extraneous to the Complaint. Plaintiff has submitted (1) affidavits of Defendant in the State Court Action, (2) portions of the record of the State Court Action, and (3) letters from agencies of the City of Los Angeles regarding the Apartment's compliance with applicable regulations. Defendant has submitted (1) portions of the record of the State Court Action and (2) a letter from Defendant's bankruptcy counsel to the Chapter 7 Trustee.

Consideration of such extraneous matters is not proper in the context of the instant Motion to Dismiss. *See* Civil Rule 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."). None of the

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extraneous materials falls within any exception which would permit the Court to consider the materials without converting the motion to dismiss to a motion for summary judgment. *See, e.g., In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999), *as amended* (Aug. 4, 1999), *superseded on other grounds by Burbrink v. Campbell*, 734 F. App'x 416 (9th Cir. 2018) (setting forth circumstances under which the Court may consider extraneous matters without converting a motion to dismiss to a motion for summary judgment); *Rose v. Beverly Health & Rehab. Servs., Inc.*, 356 B.R. 18, 24 (E.D. Cal. 2006), *aff'd sub nom. Rose v. Beverly Health & Rehab. Servs., Inc.*, 295 F. App'x 142 (9th Cir. 2008) (same).

The papers submitted by both Plaintiff and Defendant contain numerous accusations against the opposing party that are not relevant to the legal issue at hand—namely, whether the Complaint alleges sufficient facts to state a claim for relief. *See, e.g.*, Motion at 2 (“Plaintiff is a mentally disabled and disturbed person who has nothing better to do but to waste the Court’s time and disturb defendant’s life”); Opposition at 9 (“The defendant has a history of supplying false addresses to the IRS and to the California State Income Tax Department”). Such accusations serve no legitimate purpose and are of no assistance to the Court in adjudicating the Motion. The Court understands the adversarial position of the parties. However, personal attacks upon an opposing party are not an appropriate means of advancing one’s position in the litigation.

D. The Complaint States a Claim Under § 523(a)(2)(A)

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But

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where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces “does not require ‘detailed factual allegations,’ ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To state a claim under § 523(a)(2)(A), a complaint must contain factual allegations showing that:

- 1) the debtor made the representations;
- 2) that at the time he knew they were false;
- 3) that he made them with the intention and purpose of deceiving the creditor;
- 4) that the creditor relied on such representations; and
- 5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010).

The Complaint alleges that Defendant induced Plaintiff to rent the Apartment by representing that the Apartment complied with all applicable codes and regulations. The Complaint further alleges that the Apartment contained serious compliance issues, including a lack of adequate heating, hazardous wiring, a lack of a securable door, and missing smoke alarms and carbon monoxide alarms. The Complaint states a plausible claim for relief under § 523(a)(2)(A). The facts alleged support a reasonable inference that Defendant was aware of the Apartment's defects but concealed those defects from Plaintiff in order to secure Plaintiff's tenancy. The Complaint plausibly

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alleges that Plaintiff suffered damages from the representations, since she would not have rented the Apartment had she been aware of the compliance issues.

E. The Complaint States a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002) (internal citations omitted).

The Complaint alleges that the Apartment failed to meet habitability requirements imposed by California law. Specifically, the Complaint alleges that the Apartment lacked a working furnace or securable door, contained hazardous electrical wiring, and lacked smoke alarms or carbon monoxide alarms. The Complaint further alleges that Defendant was aware of these defects but failed to take any remedial action.

The Complaint states a claim under § 523(a)(6). The allegation that Defendant was aware of the Apartment's serious habitability deficiencies but failed to take remedial action supports a reasonable inference that Defendant either subjectively intended to harm the Plaintiff, or at the very least had a subjective belief that harm was substantially certain. Defendant's alleged failure to place the Apartment into compliance qualifies as an intentional wrongful act, done without just cause or excuse, which necessarily causes injury.

F. The Complaint Fails to State a Claim Under § 727(a)(3)

Section 727(a)(3) provides that a debtor is not entitled to a discharge if:

the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be

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ascertained, unless such act or failure to act was justified under all of the circumstances of the case.

The Complaint alleges that Defendant failed to schedule the community property assets of his spouse, Yvette Merino. The Complaint does not describe the assets which were allegedly not disclosed or state their value.

Section 727(a)(3) prevents a debtor from receiving a discharge where the debtor has concealed or destroyed business records that would enable the Trustee or creditors "to ascertain [the Debtor's] financial position or to follow [the Debtor's] business transactions with any assurance of accuracy." *Cox v. Lansdowne (In re Cox)*, 904 F.2d 1399, 1402 (9th Cir. 1990). For example, in *Cox*, the court upheld the denial of discharge of a debtor who had failed to keep any financial records for real estate and a major corporation in which the debtor held an interest. *Id.*

The Complaint fails to state a claim under § 727(a)(3). The Complaint does **not** allege that Defendant failed to keep accurate records of his financial condition. Instead, the Complaint alleges that the Defendant failed to properly schedule certain community property assets associated with his spouse. By its terms, § 727(a)(3) does not pertain to misrepresentations on a debtor's schedules.

Because the Complaint's allegations fall completely outside the scope of § 727(a)(3), the claims under § 727(a)(3) are dismissed without leave to amend. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (holding that the Court may dismiss complaint without leave to amend where any proposed amendment would be futile).

G. The Complaint Fails to State a Claim Under § 727(a)(4)(A)

Section 727(a)(4)(A) provides that a debtor is not entitled to a discharge if "the debtor knowingly and fraudulently, in or in connection with the case made a false oath or account"

To state a claim under § 727(a)(4)(A), a complaint must contain factual allegations showing that:

- 1) the debtor made a false oath in connection with the case;
- 2) the oath related to a material fact;
- 3) the oath was made knowingly; and
- 4) the oath was made fraudulently.

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Retz v. Samson (In re Retz), 606 F.3d 1189, 1197 (9th Cir. 2010).

"A fact is material 'if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property.' An omission or misstatement that 'detrimentally affects administration of the estate' is material." *Retz*, 606 F.3d at 1198 (internal citations omitted). A false statement is made "knowingly" if the debtor "acts deliberately and consciously." *Id.* A false statement is made "fraudulently" if the debtor makes the statement "with the intention and purpose of deceiving creditors." *Id.*

The Complaint alleges that Defendant is not entitled to a discharge because Defendant made statements on his schedules that he later corrected at the § 341(a) meeting. The Complaint fails to state a claim under § 727(a)(4)(A) with respect to such statements. Where a debtor makes representations on schedules that he later corrects at the meeting of creditors, it is not plausible that such statements were deliberately and consciously made for the purpose of deceiving creditors. Had the statements been made with a deliberate intent to deceive, the debtor would not have corrected them at the § 341(a) meeting. The allegations set forth in ¶¶ 55, 61, and 65 are dismissed without leave to amend.

The Complaint alleges that Defendant valued a vehicle worth \$7,500 at only \$5,000. Complaint at ¶ 62. The Complaint alleges that Defendant valued furniture and electronics at \$1,500 when those items are worth considerably more (the Complaint does not allege the correct value of the furniture and electronics). *Id.* at ¶ 63. These allegations fail to state a claim under § 727(a)(4)(A). Even if it is true that Defendant mis-stated the value of these items, the mis-statement was not material because it did not "detrimentally affect the administration of the estate." *Retz*, 606 F.3d at 1198. The items were disclosed, making it possible for the Trustee to conduct a further investigation in the event the Trustee doubted Defendant's valuation. The allegations set forth in ¶¶ 62 and 63 are dismissed without leave to amend.

The Complaint alleges that on his schedules, Defendant misrepresented the nature of the State Court Judgment that Plaintiff obtained against. *Id.* at ¶ 64. Like the allegations set forth in ¶¶ 62 and 63, this alleged misrepresentation is not material. The allegations set forth in ¶ 64 are dismissed without leave to amend.

The Complaint alleges that Defendant failed to list in the SOFA information regarding businesses from which he received income. *Id.* at ¶ 57. The Complaint does not contain the names of specific businesses which the Defendant allegedly failed to disclose. The threadbare allegation that Defendant failed to disclose some unidentified

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business does not permit the Court "to infer more than the mere possibility of misconduct" and therefore fails to state a claim. *Iqbal*, 556 U.S. at 678. The allegations set forth in ¶ 57 are dismissed without leave to amend.

The Complaint alleges that Defendant falsely stated that he does not live with his spouse and that Defendant provided a false address. Complaint at ¶¶ 56 and 59–60. These allegations are intended to bolster Plaintiff's theory that Defendant failed to disclose community property assets associated with Defendant's spouse, thereby preventing the Trustee from liquidating such assets for the benefit of creditors.

Plaintiff's allegations of non-disclosure of community property assets fail to state a claim under § 727(a)(4)(A). To state a claim under § 727(a)(4)(A), Plaintiff is required to allege facts showing that the nondisclosure "related to a material fact." *Retz*, 606 F.3d at 1197. Without allegations regarding the nature or value of the non-disclosed assets, the Court cannot determine whether the nondisclosure was material. Absent a showing of materiality, Plaintiff cannot state a claim under § 727(a)(4)(A).

The claims pertaining to non-disclosure of community property assets are dismissed. The Court declines to provide Plaintiff leave to amend. Plaintiff has acknowledged that she does not know which community property assets Defendant has allegedly failed to disclose. *See* Opposition at 10 ("Without a detailed accounting of all property at the 3 bedroom home in Burbank, his wife's income and tax returns, and the chance to depose his wife it is impossible to know the extent of the assets being hidden by Thomas Merino."). Therefore, granting leave to amend would be futile.

H. Litigation Deadlines

Having reviewed the Unilateral Status Report filed by the Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) By no later than **July 3, 2019**, Defendant shall file an Answer to the claims under § 523(a)(2)(A) and (a)(6). It is not necessary for Defendant to file an Answer to the claims under § 727(a)(3) and (a)(4)(A), which have been dismissed without leave to amend.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **8/15/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/26/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert

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witness reports is **12/26/2019**.

- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **1/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **2/11/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be

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inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1.

The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **2/24/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is GRANTED IN PART and DENIED IN PART. The Motion is DENIED as to the claims under § 523(a)(2)(A) and (a)(6). The Motion is GRANTED as to the claims under § 727(a)(3) and (a)(4) (A), which are dismissed without leave to amend. The Court will prepare and enter a Scheduling Order and an order on the Motion to Dismiss. **Court to prepare mediation**

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Adv#: 2:18-01460 Foreman v. Merino

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

FR. 5-14-19

Docket 1

Tentative Ruling:

6/18/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 19, 2019

Hearing Room 1568

10:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#5.00 HearingRE: [97] Motion for approval of chapter 11 disclosure statement (Second Amended-with proof of service) (Tiggs, Marcus)

Docket 97

Tentative Ruling:

6/18/2019

For the reasons set forth below, the Disclosure Statement is APPROVED.

Pleadings Filed and Reviewed

1. Second Amended Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 97] (the "Disclosure Statement")
2. Second Amended Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 98] (the "Plan")
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, Dwight Stephens (the "Debtor"), filed this voluntary chapter 11 case on March 21, 2018 (the "Petition Date"). The Debtor owns and operates his own podiatry practice. The Debtor sought bankruptcy protection to reorganize his affairs and resolve collection efforts brought by pre-petition judgment creditors. The Debtor previously sought approval of an earlier version of the disclosure statement but was directed to file an amended disclosure statement to address the Debtor's potential community property interest, if any, in Debtor's non-filing spouse's real property located at 5337 S. Verdun Avenue, Los Angeles, CA (the "Verdun Property"). In support of the Disclosure Statement, the Debtor has included a Moores/Marsden analysis that reflects that he has a \$143,982.80 community property interest in the Verdun Property.

The Debtor presently seeks approval of his Second Amended Disclosure Statement [Doc. No. 97]. The following provisions are the material provisions of Debtor's Second Amended Plan [Doc. No. 98]:

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Administrative Claims

The Debtor anticipates that administrative fees for professionals will be approximately \$37,700 as of the effective date. The Debtor proposes to pay all administrative claims in full, on the effective date, from the Debtor's fully exempt retirement account, unless other arrangements are made with the Debtor's professionals for deferred payments.

Priority Tax Claims

i. Los Angeles County Tax Collector (the "LACTC"): The Debtor proposes to pay the LACTC's priority claim of \$113.25 in full on the effective date and pay the LACTC's secured claim of \$2,735.42 in full by making 24 equal monthly installments of \$146.33/mo with 18% interest.

ii. Internal Revenue Service (the "IRS"): The Debtor proposes to pay the IRS's priority tax claim of \$1,901 in full by making 34 equal monthly installments of \$141.80/mo with 5% interest.

Class 2(c) – Secured Claim of Benito Barbosa ("Mr. Barbosa")

Mr. Barbosa obtained a pre-petition medical malpractice judgment against the Debtor individually. On February 21, 2019, Mr. Barbosa filed amended Proof of Claim No. 4-2 asserting a claim for \$2,139,530.92, which Mr. Barbosa asserts is partially secured (the "Barbosa Claim"). The Debtor and Mr. Barbosa have reached an agreement, in principle, which will resolve the Barbosa Claim and anticipate filing a stipulation memorializing their agreement shortly. Pursuant to the parties' agreement, Mr. Barbosa will hold an allowed secured claim of \$200,000, which the Debtor proposes to pay in full within 1 year of the effective date with 0% interest. The remainder of Mr. Barbosa's claim will be separately classified as an unsecured claim in Class 6(c) and will be paid \$0.00.

The Debtor states that absent resolution of the Barbosa Claim, the Debtor's Plan will be infeasible.

Class 6(a) – General Unsecured Claims

This class includes any allowed unsecured claims of \$100 or less and any allowed unsecured claim larger than \$100 but whose holder agrees to reduce its claim to \$100. Each member of this class will receive 100% of the allowed claim on the effective date. This class is unimpaired and not entitled to vote on the Plan.

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Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claim not in Class 6(a) and not entitled to priority. The Debtor proposes to pay creditors in this class 30% of their claims over a period of 5 years with 0% interest. This class is impaired and entitled to vote on the Plan.

Class 6(c) – Unsecured of Claim of Mr. Barbosa

This class consists of the remainder of Mr. Barbosa’s claim, pursuant to the stipulation in principle between Barbosa and the Debtor to resolve the Barbosa Claim. This class will receive \$0.00.

Means of Implementation

The Debtor’s Plan will be funded from the following sources:

- i. Approximately \$4,000 - \$5,000 cash available as of the confirmation hearing;
- ii. Reverse Mortgage of the Verdun Property. The Debtor anticipates the reverse mortgage will produce \$55,000 during month 1 of the Plan and an additional \$115,000 in month 13.
- iv. Future disposable income for 5 years. The Debtor anticipates having approximately \$900 net future income to put towards plan payments, which the Debtor anticipates will increase to \$1,201/month starting in April 2020 once the Debtor’s non-filing spouse finishes paying off her car. The source of the Debtor’s monthly income is from the Debtor’s draw from the podiatry practice, social security, lump sum contributions from the Debtor’s non-filing spouse, and monthly contributions from the Debtor’s non-filing spouse’s income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed

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judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a).

Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

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The Court finds that the Disclosure Statement adequately addresses the concerns highlighted by the Court in connection with its review of the Debtor's original disclosure statement and contains adequate information in view of the size and complexity of the case. Among other things, the Disclosure Statement (1) describes the factors precipitating the Chapter 11 filing, (2) provides a description of the Debtor's assets and their estimated values, (3) describes the scheduled claims and classification structure of the Plan, (4) contains a liquidation analysis, (5) contains a disclaimer, (6) describes the risk factors attendant with the Plan, (7) identifies estimated administrative expenses, and (8) describes the means for execution of the Plan.

The following dates and deadlines will apply to solicitation and confirmation of the Debtor's Plan:

- 1) A hearing will be held on the confirmation of the Debtor's Chapter 11 Plan of Reorganization on **August 21, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan and, if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **June 28, 2019**.
- 3) **July 24, 2019** is fixed as the last day for creditors and equity security holders to return to Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtor's counsel by 5:00 p.m. on such date.
- 4) **July 31, 2019** is fixed as the last day on which the Debtor must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **August 7, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **August 14, 2019** is fixed as the last day on which the Debtor may file and serve a reply to any opposition to the Confirmation Motion ("Reply").

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III. Conclusion

For the reasons set forth above, the Disclosure Statement is APPROVED.

The Debtor is directed to file clean versions of the Second Amended Disclosure Statement and Second Amended Plan by no later than **June 21, 2019**.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#6.00 Hearing
RE: [97] Confirmation of chapter 11 Plan

fr. 4-9-19

Docket 97

Tentative Ruling:

Amended after the hearing.

6/18/2019

For the reasons set forth below, CONTINUE HEARING to September 18, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Second Amended Chapter 11 Plan of Reorganization [Doc. No. 106] (the "Plan")
2. Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization [Doc. No. 107]
3. Order Granting Debtor's Motion for Approval of Adequacy of Debtor's First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Liquidation [Doc. No. 111]
4. Stipulation by Ally Financial Inc. and Andrew's & Sons Tradings, Inc. for Adequate Protection 362 Stay Resolving Motion for Relief from Automatic Stay, for Adequate Protection and Plan Treatment on Lien Secured by Ford Truck F650 [Doc. No. 72]
5. Order: (1) Approving Adequate Protection Stipulation and (2) Vacating Hearing on Motion for Relief From the Automatic Stay [Doc. No. 74]
6. Stipulation by Andrew's & Son Trading Inc. and Stipulation for Adequate Protection and Plan Treatment of Proof of Claim 5 Regarding Tesla Model S and Resolution of Motion for Relief From the Automatic Stay (Personal Property) Between Debtor and JPMorgan Chase Bank, N.A. [Doc. No. 79]
7. Order Granting Motion for Relief From the Automatic Stay Personal Property (Between Debtor and JP Morgan Chase Bank, N.A.) [Doc. No. 81]

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8. Stipulation Between Debtor and First General Bank Re: Plan Treatment of Proof of Claim Numbers 10 and 11 [Doc. No. 109]
9. Order Stipulation Between Debtor and First General Bank Re: Plan Treatment of Proof of Claim Numbers 10 and 11 [Doc. No. 112]
10. Debtor's Notice of: (1) Deadline to Return Ballots; and (2) Hearing on Motion Regarding Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 113]
11. Proof of Service [Doc. No. 114]
12. Plan Ballot Summary [Doc. 118]
13. Notice of Motion and Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization Filed as of April 16, 2019
14. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession, Andrew's & Sons Tradings, Inc. dba Beston Shoes (the "Debtor"), filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). The Debtor now seeks confirmation of its *Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 106] (the "Plan").

Summary of the Plan

Class 1 – First General Bank – Accepts the Plan

Class 1 consists of the secured claim of First General Bank ("Loan 1"). First General Bank ("FGB") holds a first-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$110,894.08. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$1,155.25 for a period of twelve years. FGB will retain its lien until paid in full. FGB's claim is impaired and it voted to accept the Plan.

Class 2 – FGB – Accepts the Plan

Class 2 consists of the secured claim of FGB ("Loan 2"). FGB holds a second-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$73,991.14. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$863.40 for a period of ten years. FGB will retain its lien until paid in full. FGB's claim is impaired and it voted to accept the Plan.

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Class 3 – Amazon Capital Services, Inc. – No Ballot Cast

Class 3 consists of the secured claim of Amazon Capital Services, Inc. ("ACS"). ACS holds a third-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$477,488.27. The Debtor proposes to pay ACS in full, plus 5% interest, by making monthly payments of \$4,416 for a period of twelve years. ACS will retain its lien until paid in full. ACS's claim is impaired and ACS was entitled to vote on the Plan, but did not cast a ballot.

Class 4 – Kings Cash Group – No Ballot Cast

Class 4 consists of the secured claim of Kings Cash Group ("KCG"). KCG holds a fourth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$249,512.85. The Debtor proposes to treat KCG's claim as entirely unsecured and to pay KCG pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. KCG's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). KCG's claim is impaired and KCG was entitled to vote on the Plan, but did not cast a ballot.

Class 5 – EBF Partners, LLC dba Everest Business Funding and Corporation Services Company – No Ballot Cast

Class 5 consists of the secured claim of EBF Partners, LLC dba Everest Business Funding and Corporation Service Company ("EBF"). EBF holds a fifth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$246,734.40. The Debtor proposes to treat EBF's claim as entirely unsecured and to pay EBF pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. EBF's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c). EBF's claim is impaired and EBF was entitled to vote on the Plan, but did not cast a ballot.

Class 6 – Ally Financial – Accepts the Plan

Class 6 consists of the secured claim of Ally Financial ("Ally"). Ally holds a secured lien against the Debtor's 2011 Ford Truck F650, which secures debt in the amount of \$20,178.97. On or about November 20, 2018, the Debtor entered into an adequate protection stipulation with Ally [See Doc. Nos. 72, 74]. The Debtor proposes to pay Ally in full, plus 5.5% interest, by making monthly payments of \$490 through November 1, 2022 or until the claim is paid in full. Ally will retain its lien

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until paid in full. Ally's claim is impaired and it voted to accept the Plan.

Class 7 – JP Morgan Chase Bank, N.A. – Accepts the Plan

Class 7 consists of the secured claim of JP Morgan Chase Bank, N.A. ("Chase"). Chase holds a secured lien against the Debtor's 2015 Tesla Model S, which secures debt in the amount of \$47,414.57. On or about January 7, 2019, the Debtor entered into an adequate protection stipulation with Chase [See Doc. Nos. 79, 81]. The Debtor proposes to pay Chase in full, plus 5% interest, by making monthly payments of \$895 for a period of 60 months, or until the claim is paid in full. Chase will retain its lien until paid in full. Chase's claim is impaired and it voted to accept the Plan.

Class 8 – Hong Kong Motors – No Ballot Cast

Class 8 consists of the secured claim of Hong Kong Motors ("HKM"). HKM holds a secured lien against the Debtor's 2007 Nissan Altima, which secures debt in the amount of \$4,500. The Debtor proposes to bifurcate HKM's claim into a secured claim of \$2,835 (which the Debtor states is the current value of the collateral) and an unsecured claim of \$1,665. The Debtor proposes to pay HKM's secured claim in full, plus 5% interest, by making monthly payments of \$53 for a period of 60 months. HKM will retain its lien, up to the value of the collateral, until the secured portion of its claim is paid in full. The Debtor proposes to pay HKM's unsecured claim pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. HKM's claim is impaired and HKM was entitled to vote on the Plan, but did not cast a ballot.

Class 8(b) – New Commercial Capital – Deemed to Reject the Plan

Class 8(b) consists of the secured claim of New Commercial Capital ("NCC"). NCC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that NCC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent NCC has a lien against any of the Debtor's assets, the Debtor proposes to strip NCC's lien as of the Effective Date. NCC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(c) – Corporation Service Company as Representative – Deemed to Reject the Plan

Class 8(c) consists of the secured claim of Corporation Service Company as

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Representative ("CSC"). CSC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that CSC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that CSC has a lien against any of the Debtor's assets, the Debtor proposes to strip CSC's lien as of the Effective Date. CSC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(d) – Bank of the West – Deemed to Reject the Plan

Class 8(d) consists of the secured claim of Bank of the West ("BoW"). BoW has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that BoW holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that BoW has a valid lien against any of the Debtor's assets, the Debtor proposes to strip BoW's lien as of the Effective Date. BoW will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(e) – Employment Development Department – Unimpaired (Deemed to Accept)

Class 8(e) consisted of the secured claim of Employment Development Department ("EDD"). EDD filed a proof of claim asserting entitlement to a distribution of \$47.18. The Debtor has already paid EDD's claim in full. Accordingly, EDD is not impaired, was not entitled to vote, and is deemed to accept the Plan.

Class 9 – General Unsecured Claims – Accepts the Plan

Class 9 consists of general unsecured claims ("GUC") totaling \$2,377,121. The Debtor proposes to pay \$47,542.42, which represents approximately 2% of the total GUC claims, by making pro rata monthly payments of \$792.37 for a period of five years. Class 9 is impaired and has voted to accept the Plan.

Class 10 – Equity Interests – Unimpaired (Deemed to Accept)

Class 10 consists of Jiazheng Lu's 100% equity interest in the Debtor. Mr. Lu is an insider. Under the Plan, Mr. Lu will retain 100% of his ownership interest in the Debtor. Mr. Lu's claim is not impaired and he was not entitled to vote on the Plan.

The Debtor estimates that it will have approximately \$60,622.83 in administrative claims on the Effective Date and submits that it has sufficient cash on hand to pay all

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allowed administrative claims in full as required.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A. Issues Preventing Confirmation of the Debtor's Plan at This Time

i. Several Classes Did Not Vote

Classes 3, 4, 5, and 8 are impaired classes that were entitled to vote, but did not cast ballots. Debtor argues that in the absence of any objection, these non-voting classes should be deemed to have accepted the Plan.

The Court acknowledges the split of authority regarding whether a non-voting, non-objecting, class of creditors is deemed to have accepted or rejected a plan. *See Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians)*, 103 B.R. 211 (B.A.P. 9th Cir. 1989) (members of a class must affirmatively vote in favor of the plan in order for that class to have accepted plan treatment); *compare Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.)*, 863 F.2d 1263 (10th Cir. 1988) (Non-voting, non-objecting creditor who is a member of a class that casts no votes is deemed to have accepted the plan of reorganization for purposes of section 1129(a)(8) and 1129(b)).

Plan proponents have dealt with the problem of a non-voting class by including prominent language in the Plan, Disclosure Statement and Plan Ballot providing that creditors who did not vote would be deemed to accept the plan. *See, e.g., In re Adelpia Communications*, 368 B.R. 140, 260-62 (Bankr. S.D.N.Y. 2007) ("Section 7.3 of the Plan adopts a presumption that '[i]f no holders of Claims or Equity Interests eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such Claims or Equity Interests in such Class.'... I overruled the ACC Bondholder Group's objection, and uphold the Plan presumption with respect to the non-voting creditors in these classes.").

Unfortunately, the Debtor did not include any such language in the Plan, Disclosure Statement or Ballot. In fact, the Debtor's Ballot expressly stated that

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failure to return a timely ballot would result in the vote not being counted as either an acceptance or rejection of the Plan. *See* Confirmation Brief, Ex. 4.

Therefore, the Court finds it appropriate to reopen voting for non-voting Classes 3, 4, and 5 (the "Non-Voting Classes") and direct the Debtor to serve a supplemental notice to those classes and file a proof of service evidencing the same by no later than **June 26, 2019**, that: (i) notes that such classes previously received copies of the Debtor's solicitation package and have failed to timely return a ballot; (ii) unambiguously states that the deadline to submit a ballot has been extended to July 26, 2019, and notifies such classes that the failure to timely return a ballot by the July 26th deadline will be deemed acceptance of the Plan; and (iii) notifies creditors that additional copies of the solicitation package can be obtained by contacting Debtor's counsel.

In the event the Non-Voting Classes do not return ballots by the July 26, 2019 deadline, those classes will be deemed to have accepted the Plan and the Debtor will not be required to submit a supplemental confirmation brief addressing the issues raised below. However, if one or more of the Non-Voting Classes casts a ballot to reject the Plan, then the Court's concerns discussed below with respect to the Debtor's ability to cramdown the Plan on certain classes will necessitate a supplemental confirmation brief addressing those issues. In such case, the September 18, 2019 hearing will serve as a status conference and the Court will set a new confirmation date at that time.

ii. The Confirmation Brief Is Conclusory And Not Supported By Sufficient Evidence (applicable only if classes which previously did not return a ballot now return a ballot voting against the Plan.)

Unless the Court deems Debtor's non-voting, non-objecting, classes as having accepted the Plan, the Debtor has not satisfied § 1129(a)(8) and must therefore demonstrate that the Plan can be crammed down on those classes. However, the Court finds that the Confirmation Brief fails to adequately address certain issues or attach adequate evidence with respect to the following cram down issues:

1. Classes 1, 2, and 3 appear to be similarly situated secured creditors with claims secured by the same collateral, but the Debtor fails to address why the

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Plan does not unfairly discriminate against Class 3 by proposing to pay it only 5% interest when Classes 1 and 2 will receive 7.5% interest on their claims. Similarly, the Debtor has not provided any evidence to establish that the 5% interest rate will result in Class 3 receiving the present value of its claim.

2. The Plan proposes to avoid the secured liens held by claimants in Classes 4 and 5 on the basis that those liens are fully underwater, but the Debtor has not submitted evidence to show that it is entitled to strip off those liens pursuant to § 506(a)(1), because that section provides that "the value shall be determined in light of the purpose of the value and the proposed disposition or use of such property" which, in this case, requires some evidence of the Debtor's value as a going concern. **[Note 1]**
3. The Debtor has not submitted evidence establishing that the 5% interest rate proposed for Class 8 will result in that class receiving the present value of its claim.

Accordingly, the Debtor is directed to submit a supplemental brief in support of confirmation of the Plan that addresses the foregoing issues by no later than August 19, 2019.

B. The Confirmation Brief's Discussion of Classes 8(b), 8(c), and 8(d) is Inadequate

The Plan proposes to avoid the secured liens held by the claimants in Classes 8(b), 8(c), and 8(d) and provides that those classes will not receive any distribution under the Plan on the basis that the Debtor cannot determine any loan or monies owed to those claimants and no proofs of claim have been filed. First, the Confirmation Brief appears to argue that these creditors should be deemed to have accepted the Plan because they did not cast ballots. However, as the Court specifically noted in its tentative ruling issued in advance of the Disclosure Statement hearing, the clear language of § 1126(g) necessitates a finding that these classes are deemed to reject the Plan.

Second, the Confirmation Brief states that the Plan can be crammed down on these Classes because they will receive the "indubitable equivalent" of their claims, but since the Plan does not provide for these claimants to either retain their liens or receive any distribution under the Plan, the Court cannot find that these claimants are

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receiving the "indubitable equivalent" of their claims.

Nevertheless, Court notes that although the Debtor did not schedule any of the claims in these classes as "disputed," "contingent," or "unliquidated," the Debtor did state that the amount of such claims was "unknown." Therefore, the holders of such claims were effectively on notice of the need to file proofs of claim. *See* Fed. R. Bankr. P. 3003(c)(2) (Any creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution). In the absence of any proofs of claim, the Court believes the more appropriate analysis is to hold that the Plan can be crammed down on Classes 8(b), 8(c), and 8(d) because they are not entitled to receive any distribution.

Since section 1126(g) mandates that Classes 8(b), 8(c) and 8(d) are deemed to reject the Plan, the Debtor is not required to serve these classes with notice of the Court's decision to reopen balloting. Although the Plan will not be consensual as to these classes, for the reasons stated above, the Plan can be crammed down on Classes 8(b), 8(c), and 8(d) and the Debtor is not required to submit further briefing with respect to these classes.

III. Conclusion

For the reasons set forth above, the Court is not in a position to confirm the Debtor's Plan at this time. The hearing is CONTINUED to September 18, 2019 at 10:00 a.m.

After the hearing, the Court will prepare a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Andrew's & Son Tradings Inc.

Chapter 11

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: In view of the size and complexity of this case, the Court believes that this evidentiary burden would likely be satisfied by a declaration from the Debtor's principal or other qualified employee.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang
David Samuel Shevitz

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

fr: 3-12-19;fr. 4-2-19; 4-3-19

Docket 1

Tentative Ruling:

6/18/2019

On April 15, 2019, the Court stayed this action pending the completion of arbitration of the claims for relief asserted in the Complaint. Doc. Nos. 38 and 43. The Court set this Status Conference to monitor the progress of the arbitration. A review of the Joint Status Report indicates that although Plaintiffs have filed an arbitration demand with JAMS, no activity in the arbitration has yet taken place.

A continued Status Conference shall be held on **November 12, 2019, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the arbitration, shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By

Steven J Kahn

ST. FRANCIS MEDICAL

Represented By

Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#8.00 Status conference RE: [17] Motion For Entry of Order Dismissing Complaint or, In The Alternative, Motion For Entry of Order Staying Trial of Adversary Proceeding, And Memorandum of Points And Authorities In Support Thereof

fr. 4-2-19; 4-3-19

Docket 13

Tentative Ruling:

6/18/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By
Neal L Wolf

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#9.00 Status conference

RE: [20] Motion for Protective Order and Memorandum of Points and Authorities
in Support Thereof

fr. 4-2-19; 4-3-19

Docket 20

Tentative Ruling:

6/18/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By

Neal L Wolf

Anthony Dutra

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By

Steven J Kahn

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ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.10 HearingRE: [2439] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Debtors' Notice of Motion and Motion to Approve Terms of a Private Sale of Clinics to Union Square Hearing, Inc. In Accordance with Sections 363(b) and (f) of the Bankruptcy Code; Declaration of Richard G. Adcock in Support Thereof

Docket 2439

Tentative Ruling:

6/18/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve Terms of a Private Sale of Clinics to Union Square Hearing, Inc. in Accordance with Sections 363(b) and (f) of the Bankruptcy Code [Doc. No. 2439] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2445 and 2446 [Doc. No. 2489]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion to Approve Terms of a Private Sale of Clinics to Union Square Hearing, Inc. in Accordance with Sections 363(b) and (f) of the Bankruptcy Code [Doc. No. 2500]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Until January 31, 2019, Debtor Verity Medical Foundation ("VMF") operated two clinics (the "Clinics") located at (1) 2504 Samaritan Drive, Ste. 20, San Jose, CA and (2) 450 Sutter Street, Ste. 1404, San Francisco, CA. The Clinics were operated pursuant to a *Physician Employment Agreement* (the "PEA") between Dr. Matthew D.

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Chapter 11

Mingrone, M.D. (the "Doctor") and non-debtor Verity Medical Group, PC ("VMG"). By separate agreement, VMG and the Doctor terminated the PEA, effective January 31, 2019. Now that the Doctor is no longer affiliated with VMG and VHS, Union Square Hearing, Inc. (the "Buyer") seeks to purchase certain assets used in the continued operation of the Clinics (the "Purchased Assets"). The Purchased Assets include all furniture, fixtures, equipment, medical records, and inventory located at the Clinics.

Debtors seek approval of an Asset Purchase Agreement (the "APA") between VHS, VMF, the Buyer, the Doctor. The APA provides that Buyer will purchase from VMF the Purchased Assets, by way of a private sale, for \$30,000. The APA further provides that VMF, the Buyer, and the Doctor have entered into a transition services agreement which, among other things, permits Buyer's use and enjoyment of the Clinics pending Court approval of the APA.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

The Court approves the APA. Section 363(b) permits a debtor to sell estate property out of the ordinary course of business, subject to Court approval. The debtor must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Court finds that the sale provides optimal value to the estate. The sale will generate \$30,000 in funds for the estate and will allow the Clinics to continue to operate without interruption. Absent the sale, the estate would incur costs to remove the Purchased Assets from the Clinics. Further, the Purchased Assets would likely fetch a much lower sales price if sold to a buyer who did not intend to use the Purchased Assets in the continued operation of the Clinics.

Pursuant to § 363(f)(2), the sale is free and clear of liens, claims, and interests. To the extent any entity asserts a lien or other interest in the Purchased Assets, such entity's failure to file an opposition to the Motion constitutes consent to a sale free and clear of its interest. **[Note 1]**

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CONT... Verity Health System of California, Inc.

Chapter 11

The Debtors shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

This finding applies only to entities who received notice of the Motion. In the event an entity asserting an interest in the Purchased Assets did not receive notice of the Motion, such entity would not be deemed to consent to a sale free and clear of its interest.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:15-25404 Woo Jin Trading, Inc.

Chapter 7

#10.00 APPLICANT: Trustee: SAM S LESLIE

Hearing re [96] and [97] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,692.99

Total Expenses: \$35.32

U.S. Bankruptcy Court: \$720.06

Franchise Tax Board: \$75.91

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Woo Jin Trading, Inc.

Represented By
Young K Chang

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Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:15-25404 Woo Jin Trading, Inc.

Chapter 7

#11.00 APPLICANT: Attorney for Trustee: DANNING GILL DIAMOND & KOLLITZ LLP

Hearing re [96] and [97] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$90,689 approved, which includes \$77,686.50 interim fees previously approved [See Doc. No. 78] and current fees of \$13,002.50, but remaining payment shall be limited to \$16,799.02 per Trustee's request [See Doc. No. 96]

Expenses: \$5,085.98 approved, which includes \$4,321.01 interim expenses previously approved [See Doc. No. 78] and current expenses of \$764.97, with remaining payment to be \$764.97. The Court notes that the Trustee's Final Report [Doc. No. 96] proposes to pay Applicant \$942.11 in expenses, but Applicant states that it has already been reimbursed its interim expenses in full [Application, page 3, lines 3-4] and only seeks \$764.97 in additional expenses at this time [Application, page 20, line 4 & Exhibit 4].

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Woo Jin Trading, Inc.

Chapter 7

Debtor(s):

Woo Jin Trading, Inc.

Represented By
Young K Chang

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Zev Shechtman

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Chapter 7

#12.00 APPLICANT: Charges: U.S. Bankruptcy Court

Hearing re [96] and [97] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

See Cal. No. 10, incorporated in full by reference.

Party Information

Debtor(s):

Woo Jin Trading, Inc.

Represented By
Young K Chang

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:15-25404 Woo Jin Trading, Inc.

Chapter 7

#13.00 APPLICANT: Other: Franchise Tax Board

Hearing re [96] and [97] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

See Cal. No. 10, incorporated in full by reference.

Party Information

Debtor(s):

Woo Jin Trading, Inc.

Represented By
Young K Chang

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:15-25404 Woo Jin Trading, Inc.

Chapter 7

#14.00 APPLICANT: Accountant for Trustee: LEA ACCOUNTANCY, LLP

Hearing re [96] and [97] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,835.50 approved, which includes \$13,241.50 interim fees previously approved [*See* Doc. No. 79] and current fees of \$2,594, but remaining payment shall be limited to \$3,167.47 per Trustee's request [*See* Doc. No. 96]

Expenses: \$496 approved, which includes \$230.05 interim expenses previously approved [*See* Doc. No. 79] and current expenses of \$265.95, but remaining payment shall be limited to \$99.21 per Trustee's request [*See* Doc. No. 96]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Woo Jin Trading, Inc.

Represented By
Young K Chang

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Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:18-24215 Patricia J. Kennedy

Chapter 7

#15.00 Hearing RE [51] Motion for Protective Order

Docket 0

Tentative Ruling:

6/19/2019

For the reasons set forth below, the Motion for Protective Order is GRANTED and the order requiring the Debtor to appear for a Rule 2004 examination is QUASHED. (Amended in RED to address additional arguments presented at the hearing.)

Pleadings Filed and Reviewed:

- 1) Order: (1) Deeming Debtor's Objection to Amended Motion for 2004 Examination and Production of Documents a Motion for Protective Order and (2) Setting Applicable Dates and Deadlines in Connection Therewith [Doc. No. 51]
- 2) Debtor's (1) Objection to "Amended Motion Pursuant to FRBP and LBR 2004-1 for: Examination and Production of Documents by Patricia J. Kennedy" (Dkt. No. 41), Filed by Secured Creditors Rachel Howitt and Michzel Zugsmith; (2) Request for an Order Setting Aside Order Granting Motion and Entering Order Denying Motion [Doc. No. 48]
- 3) Unilateral Stipulation (Statement) Pursuant to LBR 7026-1(c)(3) Re (1) Debtor's Motion for Protective Order (Dkt. No. 48), and (2) This Court's Order Thereon (Dkt. No. 51) [Doc. No. 58]
- 4) Creditors' Opposition to Motion for Protective Order in Connection with Creditors' Request for Rule 2004 Exam of Debtor and Production of Documents [Doc. No. 59]
- 5) Debtor's Reply to Creditors' Opposition to Motion for Protective Order in Connection with Creditors' Request for Rule 2004 Exam of Debtor and Production of Documents [Doc. No. 63]
 - a) Declaration of Patricia J. Kennedy in Support of Debtor's Reply to Creditors' Opposition to Motion for Protective Order in Connection with Creditors' Request for Rule 2004 Exam of Debtor and Production of Documents [Doc. No. 64]

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- 6) Debtor's Evidentiary Objections and Motion to Strike Alleged Facts in Creditors' Opposition to Motion for Protective Order [Doc. No. 65]
- 7) Creditors' Opposition the "Debtor's Evidentiary Objections and Motion to Strike Alleged Facts in Creditors' Opposition to Motion for Protective Order" [Doc. No. 67]

I. Facts and Summary of Pleadings

A. Background

Patricia J. Kennedy (the "Debtor") filed a voluntary Chapter 7 petition on December 5, 2018. The Debtor received a discharge on May 20, 2019. Doc. No. 54.

On April 19, 2019, the Court entered an order granting the motion of Rachel Howitt and Michael Zugsmith (collectively, the "Creditors") to conduct a Rule 2004 examination of the Debtor. Doc. No. 45 (the "Rule 2004 Order"). Shortly thereafter, the Debtor moved to set aside the Rule 2004 Order. Doc. No. 48 (the "Opposition"). On April 30, 2019, the Court entered an order (1) deeming the Opposition to constitute a motion for a protective order (the "Motion for Protective Order") and (2) setting a briefing schedule on the Motion for Protective Order. Doc. No. 51.

B. The Debtor's Statement of Financial Affairs

The Debtor's Statement of Financial Affairs (the "SOFA") provides that the Debtor made the following transfers within two years prior to the filing of the petition:

Transferee	Description of Property Transferred	Payments Received by the Debtor for the Transfer	Date of Transfer
Rita Watnick Lily et Cie 9044 Burton Way Beverly Hills, CA 90211	Miscellaneous clothing	\$22,000	September 24, 2018
Rita Watnick Lily et Cie 9044 Burton Way Beverly Hills, CA 90211	Miscellaneous clothing	\$15,000	December 2017

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Bizan Sotudeth Uniquities The Consignment House 266 N. Beverly Drive Beverly Hills, CA	Paintings	\$7,500	December 2018
Bizan Sotudeth Uniquities The Consignment House 266 N. Beverly Drive Beverly Hills, CA	Furniture	\$100,000	January 2018
Elizabeth Mason Paperbag Princess Los Angeles, CA 90024	Miscellaneous clothing provided on consignment for sale to third parties	Miscellaneous payments, in the estimated amount of a few thousand dollars	December 2016 to November 2018
Jill Small VIP Consignment Los Angeles, CA 90024	Miscellaneous clothing and costume jewelry provided on consignment for sale to third parties	Miscellaneous payments	December 2016 to November 2018

C. Summary of Papers Filed in Connection with the Motion

Creditors initially stated that a Rule 2004 examination was necessary to enable Creditors to obtain information regarding the transfers listed in the SOFA, “any other transfers from the Debtor within two years of the Petition Date, and the Debtor’s financial affairs and assets (disclosed and undisclosed), including, but not limited to, any and all prepayments and the source of payments made.” Doc. No. 41 at 2–3. Creditors further asserted that the “examination is also needed to determine if cause exists for relief from the stay and to ascertain the location and/or disposition of personal property.” *Id.*

After the Court set a hearing and briefing schedule on the Motion for Protective Order, Creditors asserted an additional reason for the Rule 2004 examination: that the Trustee has offered to sell to Creditors the estate’s interest in preference and

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CONT... Patricia J. Kennedy

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fraudulent transfer claims. Creditors did not submit any evidence in support of their contention that the Trustee had offered to sell them the estate's avoidance claims until June 17, 2019, at which time Creditors submitted an e-mail from the Trustee's counsel stating that a purchase and sale agreement pertaining to the avoidance actions was attached. (Creditors did not supply the actual purchase and sale agreement on the ground that it is confidential.)

Debtor's position is that a Rule 2004 examination is improper for the following reasons:

- 1) A Rule 2004 examination of the Debtor would provide no benefit to the estate. The deadline for Creditors to file a dischargeability action under § 523 or an action objecting to the Debtor's discharge under § 727 has elapsed. Creditors do not need to determine whether cause exists to seek stay relief. The Debtor received her discharge on May 20, 2019, terminating the automatic stay as to the Debtor pursuant to § 362(c)(2)(C). Creditors seek a Rule 2004 examination for the improper purpose of harassing the Debtor.
- 2) Creditors assert that they are considering purchasing the estate's avoidance claims. Creditors lack standing to prosecute the avoidance claims unless and until they purchase such claims from the Trustee. Absent standing, Creditors have no basis or need for Rule 2004 discovery for the purpose of prosecuting the avoidance claims.

Creditors dispute that the purpose of the examination is to harass the Debtor. Creditors assert that they have established good cause for the examination, because they seek information related to the Debtor's assets and prepetition transfers of personal property.

II. Findings and Conclusions

The Motion for Protective Order is Granted

Bankruptcy Rule 2004(a) provides: "On motion of any party in interest, the court may order the examination of any entity." A Rule 2004 examination "may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge."

"The scope of a Rule 2004 examination is exceptionally broad," and Rule 2004

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examinations “have been compared to a ‘fishing expedition.’” *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999). Rule 2004 may be used by Trustee “as a pre-litigation device to determine if there are grounds to bring an action.” *In re Roman Catholic Church of Diocese of Gallup*, 513 B.R. 761, 764 (Bankr. D.N.M. 2014). However, “[m]atters having no relationship to the debtor’s affairs, or the administration of the bankruptcy estate are not proper subjects of a Rule 2004 examination.” *In re Fin. Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990).

Creditors initially asserted that the purpose of the examination was “to determine if cause exists for relief from the stay and to ascertain the location and/or disposition of personal property.” Doc. No. 41 at 2–3. The Court finds that there is no need for Creditors to conduct a Rule 2004 examination to determine if cause exists for filing a motion for stay relief. Debtor received a discharge on May 20, 2019. Therefore, the stay has terminated as to the Debtor by operation of law. *See* § 362(c)(2)(C) (providing that with respect to the Debtor, “the stay ... continues until the earliest of ... the time a discharge is granted or denied”).

Under the circumstances, a Rule 2004 examination is not a legitimate mechanism for Creditors to obtain information regarding the location and/or disposition of the Debtor’s personal property. The deadline for Creditors to file either a dischargeability action under § 523 or an action objecting to the Debtor’s discharge under § 727 has expired. Had the deadline not elapsed, Creditors might be entitled to Rule 2004 discovery with respect to the location and/or disposition of Debtor’s personal property, provided that such discovery was reasonably calculated to lead to information that could support a § 523 or § 727 claim. For example, information about personal property could conceivably support a § 523(a)(4) claim on the ground of larceny, or a § 727 claim that the Debtor had concealed assets. Since Creditors’ ability to commence either a § 523 or § 727 action is now time-barred, there is no reason for Creditors to obtain information regarding the Debtor’s personal property.

In Opposition to the Motion for Protective Order, Creditors assert an additional reason for the 2004 examination: that they are considering purchasing the Trustee’s avoidance claims. It was procedurally improper for Creditors to wait until the Debtor had sought a protective order to assert this additional basis for the examination. It was also not proper for Creditors to fail to submit any evidence supporting the contention that a sale offer for the avoidance actions was on the table until after the Debtors asserted an evidentiary objection. Notwithstanding these procedural irregularities, the Court will consider Creditors’ argument that a Rule 2004 examination is proper in view of Creditors’ potential purchase of the estate’s avoidance claims. Consideration

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of the argument does not prejudice the Debtor, who has had an opportunity to respond in her reply papers.

The fact that Creditors are considering purchasing the estate's avoidance claims does not entitle Creditors to conduct a Rule 2004 examination of the Debtor on issues pertaining to such claims. At this point the Trustee is the only party with standing to prosecute the avoidance claims. Unquestionably, the Trustee would have the ability to examine the Debtor under Rule 2004 for the purpose of investigating whether to file an avoidance action. However, it does not follow that Creditors can use Rule 2004 discovery to evaluate whether to purchase the estate's avoidance rights from the Trustee. Creditors do not have the ability to file an avoidance action unless and until they acquire that right from the Trustee—which may never happen. Therefore, information obtained by Creditors through a Rule 2004 examination would not facilitate administration of the estate, since Creditors have no interest in the estate's avoidance claims. Good cause for a Rule 2004 examination is shown "if the examination is necessary to establish the claim of the party seeking the examination." *In re Dinubilo*, 177 B.R. 932, 943 (E.D. Cal. 1993). Creditors cannot show good cause because they have no interest in the estate's avoidance claims.

In In re J & R Trucking, Inc., 531 B.R. 818 (Bankr. N.D. Ind. 2010), the court refused to allow creditors to examine the debtor to obtain information regarding potentially avoidable prepetition transfers. The *J & R Trucking* court stated:

*In assessing the propriety of a request for a 2004 examination, its purpose as an investigatory device arising out of the needs of the trustee should be kept in mind, and where a proposed examination goes beyond that purpose it should be carefully scrutinized. Here, both motions, although couched in the rule's language of matters affecting the administration of the estate and investigating the conduct of the debtor, exceed those boundaries. Remember, these are chapter 7 cases and it is the trustee's the duty to investigate the debtor's affairs and the rights of the bankruptcy estate. To the extent the movants seek to discover avoidable transfers, they are intruding upon the trustee's duties and taking those duties upon themselves. While the court may understand their curiosity, there is nothing the movants could do with that information once they got it. They could not act upon it, or seek to recover any such transfers; the trustee has the exclusive right to do so. *Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir.1990) (If a third party tries to prosecute a cause of action belonging to the trustee, the action should be dismissed.). So, in that sense,*

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their examination can serve no real purpose. While movants may genuinely want to help the trustee, should the trustee desire that assistance, they must do so directly, acting for, at the behest of, and in the name of the trustee, and not indirectly, in a manner that treats the trustee as simply an incidental beneficiary of an endeavor actually undertaken for someone else. *Cf. Matter of Vitreous Steel Products Co.*, 911 F.2d 1223, 1231 (7th Cir.1990) (trustee may accept help from creditors but creditors may not act in their own name to protect the interests of the estate).

In re J & R Trucking, Inc., 431 B.R. 818, 822 (Bankr. N.D. Ind. 2010).

As was the case in *J & R Trucking*, it is not appropriate for Creditors to use Rule 2004 discovery to inquire into the estate's avoidance claims. The fact that Creditors are considering purchasing the avoidance claims does not change the analysis. Unless and until the Creditors acquire the avoidance claims from the Trustee, it is the Trustee who has the exclusive right to prosecute those claims. **[Note 1]**

Creditors argue that they need Rule 2004 discovery to assess the merits of the avoidance claims to determine if the claims are worth purchasing. That argument is without merit. Rule 2004 is not a mechanism for Creditors to conduct due diligence regarding a potential purchase of the estate's avoidance claims. *See J & R Trucking*, 431 B.R. at 821 (stating that it is not appropriate for creditors to use Rule 2004 "to deal with their special problems").

For these reasons, the Motion for Protective Order is GRANTED. The Court will QUASH the order requiring the Debtor to appear for a Rule 2004 examination.

Evidentiary Rulings

The Debtor moves to strike certain factual statements presented in the Creditor's Opposition, on the ground that the statements are not supported by declaration testimony, are irrelevant, constitute hearsay, and violate the best evidence rule. The statements at issue describe the circumstances giving rise to the Creditors' indebtedness and summarize information contained in the Debtor's schedules. Creditors assert that the Debtor's evidentiary objections are frivolous because the statements merely reiterate information contained in Debtor's schedules or information contained in Debtor's Motion for a Protective Order.

The Court declines to strike any material from the Opposition. The Court agrees with the Creditors that most of the statements to which the Debtor objects summarize information in the Debtor's schedules or reiterate information already contained in

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Debtor's Motion for a Protective Order. However, to the extent the statements constitute the Creditor's characterization of information contained in the Debtor's schedules, the Court relies upon the schedules themselves, and construes the Creditor's characterization of the schedules only as argument. Further, the Court notes that Creditors' characterization of the events giving rise to their indebtedness against the Debtor has only minimal relevant to the instant Motion.

III. Conclusion

Based upon the foregoing, the Motion for Protective Order is GRANTED and the order requiring the Debtor to appear for a Rule 2004 examination is QUASHED.

The Debtor shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

In the Ninth Circuit, the Trustee may sell the estate's avoiding powers. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005).

Party Information

Debtor(s):

Patricia J. Kennedy

Represented By
Craig G Margulies

Trustee(s):

Timothy Yoo (TR)

Represented By
Robert A Hessling

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2:18-24215 Patricia J. Kennedy

Chapter 7

#16.00 Hearing
RE: [65] Motion to strike Debtors Evidentiary Objections and Motion to Strike Alleged Facts in Creditors Opposition to Motion for Protective Order (with proof of service)

Docket 65

Tentative Ruling:

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See Cal. No. 15, above, incorporated in full by reference.

Party Information

Debtor(s):

Patricia J. Kennedy

Represented By
Craig G Margulies

Trustee(s):

Timothy Yoo (TR)

Represented By
Robert A Hessling

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11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

#100.00 Hearing RE: [270] Interim Application for Compensation and Reimbursement of Expenses by Professionals

Docket 0

Tentative Ruling:

Duplicate entry.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

#101.00 HearingRE: [272] Application for Compensation Interim Fee Application of SulmeyerKupetz, A Professional Corporation, Attorneys For David M. Goodrich, Chapter 7 Trustee; Declarations of David M. Goodrich And Steven F. Werth, with proof of service, for SulmeyerKupetz, A Professional Corporation, Trustee's Attorney, Period: 2/4/2015 to 5/6/2019, Fee: \$91,279.50, Expenses: \$10,394.55.

Docket 272

Tentative Ruling:

6/18/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$91,279.50

Expenses: \$10,394.55

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

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CONT... Shasa USA LLC

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Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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2:15-11688 Shasa USA LLC

Chapter 7

#102.00 HearingRE: [273] Application for Compensation (First Interim) with Proof of Service for Menchaca & Company LLP, Accountant, Period: 2/11/2015 to 5/25/2019, Fee: \$43,272.00, Expenses: \$3,995.40.

Docket 273

Tentative Ruling:

6/18/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$43,272.00

Expenses: \$3,995.40

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth

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Chapter 7

Jason Balitzer
Mark S Horoupian

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11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

#103.00 Hearing re [261] Interim fee applications.

Docket 0

Tentative Ruling:

Duplicate entry.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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Hearing Room 1568

11:00 AM

2:17-21117 Young Jin Yum and Jung Hee Yum

Chapter 7

#104.00 APPLICANT: Trustee: David M Goodrich

Hearing re [67] and [68] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,750

Total Expenses: \$298.23

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Young Jin Yum

Represented By
Jaenam J Coe

Joint Debtor(s):

Jung Hee Yum

Represented By
Jaenam J Coe

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CONT... Young Jin Yum and Jung Hee Yum

Chapter 7

Trustee(s):

David M Goodrich (TR)

Pro Se

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11:00 AM

2:17-21117 Young Jin Yum and Jung Hee Yum

Chapter 7

#105.00 APPLICANT: Accountant: Hahn, Fife & Company

Hearing re [67] and [68] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/18/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,738

Expenses: \$392

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Young Jin Yum

Represented By
Jaenam J Coe

Joint Debtor(s):

Jung Hee Yum

Represented By
Jaenam J Coe

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Trustee(s):

David M Goodrich (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#106.00 HearingRE: [794] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims and Interests, and Granting Certain Other Related Relief; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr., Vu Ly and Dino Cruz in Support Thereof, with Proof of Service

Docket 794

Tentative Ruling:

6/18/2019

Hearing required. The Court will conduct an auction in accordance with the procedures set forth below.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of all Liens, Claims and Interests and Granting Certain Other Related Relief [Doc. No. 794] (the "Sale Motion")
2. Notice of Sale of Estate Property [Doc. No. 795]
3. Stipulation re Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of all Liens, Claims and Interests and Granting Certain Other Related Relief [Doc. No. 797] (the "Valensi Rose Stipulation")
4. Order Approving Stipulation re Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of all Liens, Claims and Interests and Granting Certain Other Related Relief [Doc. No. 801]
5. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Monge Property Investments, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on May 31, 2012 (the "Petition Date"). The Debtor presently seeks an order authorizing the sale of real property located at 5908 ½ Fayette Street, Los Angeles, CA 90042 (the "Property") so that it can use the sale proceeds to fund necessary effective date payments proposed under its chapter 11 plan and satisfy the feasibility

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requirements for plan confirmation.

Chapter 11

On August 22, 2014, the Court entered the Order Approving the Debtor's Application to Employ Vu Ly (the "Broker") as Real Estate Broker [Doc. No. 323]. The Debtor listed the Property for sale with the Broker on May 3, 2018. On August 20, 2018 the Court approved a sale of the Property for \$295,000, but the buyer later backed out and the Property was relisted for \$249,806 [Doc. No. 728]. After a period of renewed marketing, and extensive negotiations, the Debtor accepted the offer an offer of \$230,000 from Dino and Rowena Cruz, subject to overbids.

The Debtor believes that the proposed sale will generate approximately \$103,836 of net proceeds for the Estate and will allow for payment in full of Valensi Rose, PLC's ("VR") and the Employment Development Department's ("EDD") administrative claims directly from escrow. The Debtor also obtained Court approve of its stipulation with VR for payment in full directly from escrow [*See* Doc. Nos. 797 & 801].

Therefore, the Debtor seeks an order: (a) authorizing the sale of the Property to the Proposed Buyers free and clear of all liens, claims, and interests; (b) approving the proposed overbid procedures; (c) determining that the Proposed Buyers are good faith purchasers; (d) authorizing payment of commissions set forth in the Sale Motion at the close of escrow; (e) authorizing payments of liens, claims and interests on and against the Property, if any, at the close of escrow; (f) authorizing the payment of real property taxes, plus interest, and all customary escrow fees and costs at the close of escrow; (g) transferring and attaching any liens, claims and interests to the net proceeds and authorizing the Debtor to hold that portion of the sale proceeds attributable to any disputed interests, if any, pending further order of the Court; (h) compelling all holders of any interest against the Property to execute any document necessary to facilitate the close of escrow; and (i) waiving the fourteen-day stay prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

The key terms of the proposed sale are as follows:

- 1) Proposed buyers: Dino and Rowena Cruz (the "Proposed Buyers")
- 2) Property for sale: 5908 ½ Fayette Street, Los Angeles, CA 90042
- 3) Purchase price: \$230,000 (all cash)

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- 4) The sale is on an "as-is, where-is" basis
- 5) Overbids: The initial overbid shall be \$15,000; subsequent overbids shall be in the amount of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Debtor of their intent to overbid and the amount of such interested bidder's initial overbid no later than seventy-two hours prior to the hearing on the Sale Motion. Overbidders shall provide the Debtor with a cashier's check in the amount of \$10,000 prior to the hearing on the Sale Motion.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits a debtor-in-possession to sell estate property outside the ordinary course of business, subject to court approval. The debtor-in-possession must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Here, the Debtor has articulated a sufficient business justification for the sale. The Debtor believes the proposed sale of the Property is in made in good faith and in the best interest of the Estate because the sale will generate enough funds to pay all administrative claims in full, contribute to Debtor's proposed plan payment to unsecured creditors, and provide an infusion of funds for Debtor's general operating expenses. The Debtor believes that the sale price is reasonable considering that the Property was actively marketed. Additionally, the sale is subject to overbids, which will further ensure that the Property is sold for the highest and best price.

The Court also finds that the Debtor has met the conditions for a sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;

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- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

In this case, other than possibly the Los Angeles County Treasurer and Tax Collector which would be paid directly through escrow, the Debtor does not believe that there are any liens or encumbrances on the Property. Therefore, the Court finds that the sale is appropriate pursuant to § 363(f)(3) and (4).

The Court has reviewed the declaration submitted on behalf of the Proposed Buyers and finds that the buyers are good faith purchasers within the meaning of § 363(m). Accordingly, if the Proposed Buyers are the successful bidders at the auction, the Court will approve an order making a § 363(m) finding.

Auction Procedures

The Court will distribute numbered auction paddles to the Proposed Buyers and all qualified overbidders. The initial overbid will be \$15,000. Subsequent overbids will be increments of \$5,000, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Proposed Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of § 363(m). If that buyer does not personally appear or provide testimony, the Court will not make a § 363(m) finding.

III. Conclusion

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For the reasons set forth above, the Sale Motion is GRANTED. The Court will conduct the auction in accordance with the procedures set forth above.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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11:00 AM

2:19-13763 Ya-Chuan Victor Lee

Chapter 11

#107.00 HearingRE: [47] Motion for Setting Property Value , in addition to Motion to Avoid Lien JUNIOR LIEN with Complete Business Solutions Group dba Par Funding (with proof of service)

Docket 47

Tentative Ruling:

6/18/2019

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion for Valuation of Real Property Located at: 1820 W. 146th St., Unit F, Gardena, CA to Determine Extent of Secured Claims; and to Extinguish/Avoid the Junior Lien of Complete Business Solutions Group AKA Par Funding [Doc. No. 47] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Ya-Chuan Victor Lee (the "Debtor") filed a voluntary Chapter 11 petition on April 3, 2019. The Debtor owns property located at 1820 W. 146th St., Unit F, Gardena, CA (the "Property"). On May 2, 2019, the Court authorized the Debtor to employ Donald Arthur Bonseigneur, a real estate broker at Berkshire Hathaway Home Services, to market the Property. Doc. No. 27. Debtor is in the process of marketing the Property. Debtor initially listed the Property for sale at \$425,000, but has reduced the price due to lack of interest.

The Property is encumbered by a First Deed of Trust in favor of Specialized Loan Services in the amount of \$228,320, a Second Deed of Trust in favor of J.P. Morgan Chase Bank, N.A. in the amount of \$113,680, and a Security Agreement in favor of Complete Business Solutions Group, Inc. ("CBSG") in the amount of \$81,343 (the "CBSG Lien"). Debtor moves for an order valuing the Property at \$355,000 and avoiding the CBSG Lien as wholly unsecured, pursuant to § 506. Once a buyer has been identified, Debtor intends to file a motion to sell the Property free and clear of liens. Debtor submits an appraisal in support of his contention that the Property is

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worth \$355,000.

Chapter 11

II. Findings and Conclusions

Section 506(a)(1) provides in relevant part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

The appraisal establishes that the Property has a value of \$355,000. The Debtor intends to sell the Property. Therefore, in determining the secured status of the CBSG Lien, the Court finds it appropriate to consider the cost of sale. At a \$355,000 appraised value, the cost of sale is \$21,300 (6% of the \$355,000 appraised value). The sum of the liens senior to the CBSG Lien is \$342,000. Once costs of sale are added to the senior encumbrances of \$342,000, the CBSG Lien is wholly unsecured. Therefore, the Debtor is entitled to avoid the CBSG Lien.

Based upon the foregoing, the Motion is GRANTED. The Debtor shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ya-Chuan Victor Lee

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 19, 2019

Hearing Room 1568

11:00 AM

CONT...

Ya-Chuan Victor Lee

Marcus G Tiggs

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

9:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

Docket 1

***** VACATED *** REASON: DISMISSED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

9:00 AM

2:18-15427 Francisco R. Gomez

Chapter 7

Adv#: 2:18-01251 Great Northern Insurance Company, a Corporation v. Gomez

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01251. Complaint by Great Northern Insurance Company, a Corporation against Francisco R. Gomez. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Garwacki, Ray)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 4-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco R. Gomez

Represented By
Mark La Rosa

Defendant(s):

Francisco R. Gomez

Pro Se

Joint Debtor(s):

Claudia E. Gomez

Represented By
Mark La Rosa

Plaintiff(s):

Great Northern Insurance Company,

Represented By
Ray Garwacki
Ray Garwacki Jr

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

9:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01260. Complaint by Joseph Amin against Kami Emein. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Berke, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-29-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Pro Se

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-12669 Seong H Cho

Chapter 7

#100.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 18649 West Avenue B8, Lancaster, CA 93536 .

Docket 12

Tentative Ruling:

6/20/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Shane Ellis in support of Motion at paragraphs 6 and 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on the fact that the Debtor did not schedule the subject property or otherwise assert any interest in the subject property. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, June 24, 2019

Hearing Room 1568

10:00 AM

CONT... Seong H Cho

Chapter 7

changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief requested, but not specifically granted above, is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Seong H Cho

Represented By
Michael Jay Berger

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-13612 Porfirio Alba

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Focus, VIN: 1FADP3F26EL325934 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

6/20/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 24, 2019

Hearing Room 1568

10:00 AM

CONT... Porfirio Alba

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Porfirio Alba

Represented By
Lauren M Foley

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-14633 Jeslin Gesibel Ramirez Mayorga and Enner Alexy Cruz

Chapter 7

#102.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14245 Purple Canyon Road, Adelanto, California 92301 with Exhibits and Proof of Service. (Zahradka, Robert)

Docket 15

Tentative Ruling:

6/20/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtors, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtors have not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$200,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$23,169.85. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 11.6% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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10:00 AM

CONT... Jeslin Gesibel Ramirez Mayorga and Enner Alexy Cruz Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jeslin Gesibel Ramirez Mayorga

Represented By
Daniel King

Joint Debtor(s):

Enner Alexy Cruz Leon

Represented By
Daniel King

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Central District of California
Los Angeles
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10:00 AM

CONT... Jeslin Gesibel Ramirez Mayorga and Enner Alexy Cruz

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-15475 Jose Alberto Vazquez

Chapter 7

#103.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 488 E. Ocean Blvd. #503, Long Beach, CA 90802 . (Cohen, Marc)

Docket 13

Tentative Ruling:

6/20/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on January 16, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT...

Jose Alberto Vazquez

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Alberto Vazquez

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#104.00 Hearing

RE: [2414] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .

Docket 2414

Tentative Ruling:

6/20/2019

Tentative Ruling:

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Vincent Medical Center and Ok Ran Ma Granting Motion for Relief from the Automatic Stay* [Doc. No. 2572] (the "Stipulation") is APPROVED. The Debtors shall submit an order memorializing the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#104.10 HearingRE: [2474] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Steele v. Verity Health Systems of CA, Inc., et al.. (Leeds, Nathaniel)

Docket 2474

Tentative Ruling:

6/20/2019

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **September 1, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2474] (the "Motion")
- 2) Debtors' Response and Opposition to Motion for Relief from the Automatic Stay Filed on Behalf of Christopher Steele [Doc. No. 2531]
- 3) Official Committee of Unsecured Creditors' Joinder to Debtors' Response and Opposition to Motion for Relief from the Automatic Stay Filed on Behalf of Christopher Steele [Doc. No. 2534]
- 4) Creditor Christopher Steele's Reply to Debtors' Opposition to Motion for Relief from Automatic Stay to Complete Pending State Court Litigation [Doc. No. 2554]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Christopher Steele ("Movant") seeks stay relief, pursuant to § 362(d)(1), for the purpose of litigating a medical malpractice action against Debtor St. Louise Regional Hospital ("St. Louise") in the Santa Clara Superior Court (the "State Court Action"). Movant has not agreed to limit his recovery to applicable insurance.

Debtors oppose the Motion. Debtors argue that Movant has no ability to assert a

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

claim against any of the Debtors because he failed to timely file a proof of claim. In the event the Court is inclined to grant the Motion, Debtors request that relief not take effect until after September 1, 2019, so they can retain their focus on the sale of the hospitals that was approved in April 2019. The Official Committee of Unsecured Creditors joins the Debtors' opposition.

In reply, Movant states that he did file a proof of claim. Movant requests that the stay be lifted so that discovery can begin in the State Court Action.

II. Findings and Conclusions

At the outset, the Court notes that the confusion concerning whether Movant timely filed a proof of claim resulted from Movant incorrectly filling out the proof of claim form. In the box where Movant was supposed to provide his name, Movant instead listed the address of his attorney's office. As a result of this error, Movant is not listed as a creditor on the claims register. Instead, the claims register lists the creditor associated with Movant's claim as "555 California Street, Ste. 4925" (the address of Movant's attorney's office). Movant's erroneous completion of the proof of claim form prevented the Debtors from identifying him as a claimant when searching the claims register.

Because Movant has filed a proof of claim (Proof of Claim No. 423), there is no merit to the Debtor's contention that stay relief should be denied on the ground that Movant cannot assert a claim against the estate. **[Note 1]**

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

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Verity Health System of California, Inc.

Chapter 11

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court held that "[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Id.*

Because Movant has not agreed to limit his recovery to insurance, granting stay relief at this time would require the Debtors to defend against the State Court Action. Although it would certainly be possible for the Debtors to mount a defense at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors' professionals from focusing upon completing the sale of their four remaining hospitals.

To enable the Debtors to retain their focus upon the sale, the Court will grant stay relief, but such relief shall not take effect until September 1, 2019. This result gives the Debtors some breathing space to achieve their objectives, while at the same time delaying Movant's ability to proceed with the State Court Action by only

**United States Bankruptcy Court
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

approximately two months.

Within seven days of the hearing, Movant shall submit an order incorporating this tentative ruling by reference. **[Note 2]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Court makes no determination as to the allowability of Movant's proof of claim.

Note 2

To ensure that the Debtors have the opportunity to review Movant's proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Nicholas A Koffroth

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-13763 Ya-Chuan Victor Lee

Chapter 11

#105.00 Hearing
RE: [50] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Mercedes-Benz CLS63C4S; VIN# WDDLJ7GB0HA196026 .

Docket 50

***** VACATED *** REASON: Per order entered 6-4-2019 [Doc. No. 53].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ya-Chuan Victor Lee

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#106.00 HearingRE: [48] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: pending lawsuit . (Slates, Ronald)

Docket 48

Tentative Ruling:

6/20/2019

Tentative Ruling:

For the reasons set forth herein, CONTINUE HEARING to **July 15, 2019 at 10:00 a.m.** The proof of service [Doc. No. 48] does not reflect that the Motion was served on the Debtor, individually, as required by Local Bankruptcy Rule 4001-1(c) (1)(C)(i) and, more generally, 9013-1(d)(1). Movant is directed to serve the Motion on the Debtor and give notice of the continued hearing date by no later than June 28, 2019 and file a proof of service evidencing compliance with this order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

2:19-15843 Jose Luis Sandoval

Chapter 7

#107.00 Hearing
RE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Chevrolet Camaro .

Docket 8

Tentative Ruling:

6/20/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 24, 2019

Hearing Room 1568

10:00 AM

CONT... Jose Luis Sandoval

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Luis Sandoval

Represented By
David H Chung

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 25, 2019

Hearing Room 1568

9:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-25-19

Docket 1

***** VACATED *** REASON: CONTINUED 8-26-19 AT 9:00 A.M**

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon	Pro Se
BJ Mobile, Inc., a California	Pro Se
JETWORLD, Inc., a California	Pro Se
JW Wireless OKC, an Oklahoma	Pro Se
JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 25, 2019

Hearing Room 1568

9:00 AM

CONT...

JW Wireless Inc.

Chapter 7

Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 25, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr. 2-12-19; 4-10-19

Docket 1

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

FR. 3-25-19

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-12-19**

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 26, 2019

Hearing Room 1568

9:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

fr. 2-12-19; 4-10-19; 4-10-19

Docket 1

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

#1.00 HearingRE: [58] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Ford Explorer; VIN: 1FM5K8GT7FGC05888 . (Wang, Jennifer)

Docket 58

Tentative Ruling:

6/26/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

CONT... Paul A. Carrasco

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

2:19-15913 Larry Galvez Diaz

Chapter 7

#2.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 728 1/2 Chestnut Ave., Long Beach, CA 90813 . (Cohen, Marc)

Docket 11

Tentative Ruling:

6/26/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on April 18, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

CONT... Larry Galvez Diaz

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Larry Galvez Diaz

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

2:19-15475 Jose Alberto Vazquez

Chapter 7

#3.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 DODGE DURANGO VIN 1C4RDHEG6EC537087 . (Wang, Jennifer)

Docket 15

Tentative Ruling:

6/26/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 2, 2019

Hearing Room 1568

10:00 AM

CONT...

Jose Alberto Vazquez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Alberto Vazquez

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 3, 2019

Hearing Room 1568

10:00 AM

2:19-15906 795 Fairfield Circle, LLC

Chapter 7

#1.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. LLC :Jeffrey Thompson . (Ventura, Olivia) Additional attachment(s) added on 5/21/2019 (Ventura, Olivia). Additional attachment(s) added on 5/21/2019 (Ventura, Olivia).

Docket 1

Tentative Ruling:

7/2/2019

The Involuntary Petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against an Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
- 3) Proof of Service of Summons and Notice of Status Conference [Doc. No. 5]

On May 21, 2019, Jeffrey Thompson ("Thompson") filed an involuntary petition (the "Involuntary Petition") against 795 Fairfield Circle, LLC ("Fairfield"). Thompson alleges that Fairfield owes him \$247,000 on account of "investment, unpaid services and improvements."

On June 11, 2019, Thompson filed a Proof of Service indicating that the Involuntary Petition was served upon Fairfield at the address "795 Fairfield Circle, Pasadena, CA 91106" on June 10, 2019.

The Statement of Information on file with the California Secretary of State indicates that Thompson is the manager of Fairfield.

Numerous defects require dismissal of the Involuntary Petition. First, service was improper. The Summons was not served upon Fairfield within seven days of issuance, as required by Bankruptcy Rule 7004. In addition, the Summons was served upon the incorrect address. Pursuant to Bankruptcy Rule 7004, service upon a corporation is made "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" Service would have been proper had the Involuntary Petition been served either upon Thompson, in his capacity as Fairfield's

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 3, 2019

Hearing Room 1568

10:00 AM

CONT... 795 Fairfield Circle, LLC

Chapter 7

manager, or upon Fairfield's registered agent for service of process. Records on file with the California Secretary of State indicate that Thompson's address is "530 S. Lake Ave., Pasadena, CA 91101," and that the address of Fairfield's registered agent, Bizstartup.com, is "14425 Sylvan St., Van Nuys, CA 91404." The Involuntary Petition was not served upon either of these addresses.

Second, Thompson did not use the correct Official Form when commencing these proceedings. Thompson used Official Form 105, Involuntary Petition Against an Individual, when he should have used Official Form 205, Involuntary Petition Against a *Non-Individual*.

Third, it appears to the Court that Thompson filed the Involuntary Petition in order to place Fairfield into bankruptcy without being required to retain and pay counsel to represent Fairfield. As Fairfield's manager, Thompson could have caused Fairfield to file a voluntary Chapter 7 petition, but only if he retained an attorney to represent Fairfield. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993) ("[A] corporation may appear in the federal courts only through licensed counsel"); *see also* Local Bankruptcy Rule 9011-2(a). In view of Thompson's position as Fairfield's manager, the Court can find no legitimate reason for Thompson to have filed an involuntary petition against Fairfield as opposed to causing Fairfield to filing a voluntary Chapter 7 petition.

Based upon the foregoing, the Involuntary Petition is DISMISSED. The Court will prepare and enter an order dismissing the case.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

795 Fairfield Circle, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 3, 2019

Hearing Room 1568

10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#2.00 HearingRE: [61] Application for Compensation Brief in Support of First Interim Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses on Behalf Of Law Office Of Lionel E. Giron For Debtor In Possession For Period of November 15, 2018 through June 12, 2019 for Law Offices of Lionel E. Giron, Debtor's Attorney, Period: 11/15/2018 to 6/12/2019, Fee: \$13,058.00, Expenses: \$352.05.

Docket 61

Tentative Ruling:

7/2/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below, provided that by no later than **July 10, 2019**, applicant files a declaration that complies with Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J).

Fees: \$13,058

Expenses: \$352.05

The Court notes that several of applicant's time entries are not being tracked in one-tenth of an hour increments (.1) as required by LBR 2016-1(a)(1)(E)(iii). Applicant is cautioned that failure to comply with LBR 2016-1(a)(1)(E)(iii) in the future may result in the Court striking noncompliant time entries in their entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 3, 2019

Hearing Room 1568

10:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

2:15-22223 Haroon-Ur-Rashid Temueri and Shaheen Shrein Temueri

Chapter 7

#1.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 28601 Silverking Trail, Santa Clarita, California 91390 with Proof of Service. (Loftis Pacheco, Erica)

Docket 21

Tentative Ruling:

7/3/2019

Tentative Ruling:

For the reasons set forth below, the R/S Motion is GRANTED IN-PART and DENIED IN-PART.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 21] (the "R/S Motion")
2. Debtors' Untimely Opposition to Motion for Relief of Automatic Stay [Doc. No. 23]
3. Discharge Order [Doc. No. 12]

I. Facts and Summary of Pleadings

Haroon-Ur-Rashid Temueri and Shaheen Shrein Temueri (the "Debtors") filed a voluntary chapter 7 petition on August 4, 2015. On November 16, 2015, the Debtors received a chapter 7 discharge and the case was closed one day later [Doc. Nos. 12 & 13]. On April 17, 2019, the Court entered an order granting Debtors' Motion to Reopen Case for the limited purpose of filing a motion under 11 U.S.C. § 522(f) [Doc. No. 19] [**Note 1**].

The Bank of New York Mellon FKA The Bank of New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee on Behalf of the Certificate holders of the CWHEQ Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-F ("Movant") filed a motion for relief from the automatic stay under 11 U.S.C

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Haroon-Ur-Rashid Temueri and Shaheen Shrein Temueri Chapter 7

§§ 362(d)(1) and (d)(2) with respect to real property located at 28601 Silverking Trail, Santa Clarita, California 91390 (the "Property") [Doc. No. 21] (the "R/S Motion"). The evidence attached in support of the R/S Motion support a finding that there is no equity in the Property.

On July 2, 2019, the Debtors filed an untimely Opposition [Doc. No. 23] requesting that the Court deny the R/S Motion because they have tried to make payments to Movant but the payments have been returned and communications with Movant have not been productive.

II. Findings and Conclusions

The filing of a bankruptcy case imposes an automatic stay on virtually all creditor debt collection activities. *See* § 362(a). However, the automatic stay does not last indefinitely. In a chapter 7 case for an individual, the automatic stay terminates when a discharge is granted or denied.

In this case, the discharge was granted on November 16, 2015. Upon the granting of the discharge, the automatic stay was replaced by the discharge injunction provided by § 524(a). Therefore, Movant's request for an order confirming that there is no stay in effect is GRANTED. The Court also finds it appropriate to waive the 14-day stay prescribed by FRBP 4001(a)(3). All other relief requested is denied.

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED IN-PART and DENIED IN-PART.

Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Haroon-Ur-Rashid Temueri and Shaheen Shrein Temueri Chapter 7

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Order directed the Debtors to file any § 522(f) motions within thirty days from the entry of the order [Doc. No. 19]. It further provided that if the above-referenced motions were not filed within 30 days from the date of entry of that Order, the case could be immediately re-closed without further notice or hearing. As of the date of this tentative ruling, the Debtors have not filed the contemplated motion(s).

Party Information

Debtor(s):

Haroon-Ur-Rashid Temueri

Represented By
Jeffrey N Wishman
Anthony P Cara

Joint Debtor(s):

Shaheen Shrein Temueri

Represented By
Jeffrey N Wishman
Anthony P Cara

Trustee(s):

Richard K Diamond (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

2:19-14765 Patricia Castillo

Chapter 7

#2.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2019 TOYOTA HIGHLANDER with Proof of Service. (Loftis Pacheco, Erica)

Docket 11

Tentative Ruling:

7/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Patricia Castillo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Patricia Castillo

Represented By
Sydell B Connor

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

2:19-15726 Rossy Jacquelyne Portillo

Chapter 7

#3.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 VOLKSWAGEN JETTA VIN 3VWLZ7AJ4BM383828 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

7/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Rossy Jacquelyne Portillo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rossy Jacquelyne Portillo

Represented By
D Justin Harelik

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

2:19-15935 Rosco J Ellis

Chapter 7

#4.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 917 Larrabee St., #11, West Hollywood, CA 90069 .

Docket 11

Tentative Ruling:

7/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on April 19, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Rosco J Ellis

Chapter 7

Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rosco J Ellis

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

2:19-13763 Ya-Chuan Victor Lee

Chapter 11

#5.00 Hearing
RE: [54] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Mercedes-Benz C63WS; VIN# 55SWF8HB2GU117778 .

Docket 54

***** VACATED *** REASON: STIPULATION ENTERED 7-3-19**

Tentative Ruling:

7/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and the Debtor has not responded with argument or evidence sufficient to satisfy his burden of proof under § 362(g) and demonstrate that the vehicle is necessary for an effective reorganization.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 8, 2019

Hearing Room 1568

10:00 AM

CONT... Ya-Chuan Victor Lee

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ya-Chuan Victor Lee

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#1.00 HearingRE: [129] Motion to Reopen Adversary Proceeding / Plan Administrator's Motion to Reopen Adversary Proceeding and Schedule Trial. (Greenwood, Gail)

Docket 129

Tentative Ruling:

For the reasons set forth below, the Court declines to reopen this adversary proceeding and set this matter for trial until the District Court for the Northern District of California has adjudicated Ho's appeal of the Judgment Denying Discharge. A Status Conference concerning the status of the appeal shall be held on **October 15, 2019, at 10:00 a.m.** and a joint status conference report shall be filed no later than **October 7, 2019.**

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Motion to Reopen Adversary Proceeding and Schedule Trial [Doc. No. 129] (the "Motion")
 - a) Notice of Motion [Doc. No. 130]
- 2) Defendant Tsai Luan Ho a/k/a Shelby Ho's Opposition to Plan Administrators' Motion to Reopen Adversary Proceeding and Schedule Trial [Doc. No. 132] (the "Opposition")
 - a) Request for Judicial Notice [Doc. No. 133]
- 3) Plan Administrator's Reply in Support of Motion to Reopen Adversary Proceeding and Schedule Trial [Doc. No. 134] (the "Reply")

I. Facts and Summary of Pleadings

A. Background

Trial in this adversary proceeding was set for May 29–30, 2018. On May 28, 2018, Defendant Tsai Luan Ho a/k/a Shelby Ho ("Ho") filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Northern District of California (the "Northern District Bankruptcy Court"). [Note 1] The Court took the trial off calendar. Based upon Plaintiff's representation that it intended to pursue a non-dischargeability action against Ho in the Northern District Bankruptcy Court, the Court subsequently dismissed this action without prejudice.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

On December 29, 2017, the Court entered a *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* (the "Memorandum of Decision") and corresponding judgment (the "Judgment") in the adversary proceeding *Plan Administrator v. Lucy Gao and Benjamin Kirk* (Adv. No. 2:16-ap-01337-ER). On February 8, 2019, the District Court reversed the Memorandum of Decision and Judgment and remanded the action for further proceedings. The Plan Administrator subsequently entered into separate settlement agreements with Gao and Kirk. On June 18, 2019, the Court approved a stipulation dismissing the action with prejudice as to Gao. The action remains pending as against Kirk, who has not yet made all the installment payments required by the settlement.

Prior to taking trial of the instant action off calendar, the Court issued two tentative rulings. The first tentative ruling granted Plaintiff's Motion *in Limine* to exclude certain evidence presented by Ho that had not been timely produced during discovery. The second tentative ruling held that Ho was precluded from contesting the following findings of fact contained in the Memorandum of Decision:

- 1) Investors contributed funds to Liberty that were earmarked for investments in specific properties, pursuant to investment contracts entered into between Liberty and the investors. Liberty did not use the funds in accordance with the investment contracts to purchase the properties for which the funds had been earmarked. Rather than segregating the funds contributed by each investor to insure that such funds were used for their intended purpose, Liberty treated all investor funds as a single capital pool. Liberty used this capital pool to attempt to acquire whatever property it was pursuing at the time, regardless of whether that property was the one specified by the investor. Memorandum of Decision at 6.
- 2) Liberty received approximately \$36.26 million for the purchase of specified real properties from various investors, but failed to purchase any of the properties in question and failed to return any of the investors' funds. *Id.* at 7.
- 3) Liberty engaged in the business of acquiring and selling commercial properties. As of 2012, Liberty's business of acquiring and selling commercial properties was not profitable. *Id.* at 7.

Although Ho was not a party to the litigation that produced the Memorandum of Decision, the Court found that preclusion was appropriate because Kirk qualified as

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 9, 2019

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10:00 AM

CONT... **Liberty Asset Management Corporation**

Chapter 11

the virtual representative of Ho. *See Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004) (holding that privity exists for issue preclusion purposes “when two parties are so closely aligned in interest that one is the virtual representative of the other”).

On July 20, 2018, Plaintiff filed a non-dischargeability action against Ho in the Northern District Bankruptcy Court (the "523 Action"). On August 23, 2018, the Chapter 7 Trustee in Ho's bankruptcy case filed a § 727 complaint to deny Ho's discharge (the "727 Action"). On April 9, 2019, the Northern District Bankruptcy Court entered judgment denying Ho's discharge, pursuant to § 727(a)(3) (the "Judgment Denying Discharge"). On April 16, 2019, Ho appealed the Judgment Denying Discharge to the United States District Court for the Northern District of California (the "District Court"). On June 7, 2019, the Northern District Bankruptcy Court denied Ho's motion for a stay pending appeal of the Judgment Denying Discharge. Ho's appeal of the Judgment Denying Discharge remains pending before the District Court. Proceedings in the 523 Action have been stayed pending resolution of the appeal of the Judgment Denying Discharge. On April 26, 2019, the Northern District Bankruptcy Court issued a minute order providing that the 523 Action "may be restored to the calendar after the District Court acts on the pending appeal" of the Judgment Denying Discharge.

B. Summary of Papers Filed in Connection with the Motion to Reopen

Plaintiff seeks an order reopening the instant adversary proceeding and setting the matter for an immediate status conference and trial.

Ho opposes the Motion. Ho asserts that if the proceeding is reopened, the parties must be given additional time to conduct discovery. Ho contends that the pretrial proceedings were based in significant part on the findings contained in the Memorandum of Decision. Specifically, Ho asserts that certain findings contained in the *Final Joint Pretrial Stipulation Between the Official Committee of Unsecured Creditors, Tsai Luan Ho, and Benjamin Kirk as Modified by the Court* [Doc. No. 89] (the "Pretrial Order") were predicated upon the Memorandum of Decision, and that such findings now fail in view of the District Court's reversal of the Memorandum of Decision. According to Ho, the Plan Administrator must now start from scratch to prove a case against Ho.

The Plan Administrator disputes Ho's contention that findings in the Pretrial Order were predicated upon the Memorandum of Decision. The Plan Administrator contends that Ho's arguments are merely an attempt to delay trial.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

II. Findings and Conclusions

In the interests of judicial efficiency, the Court will not set this matter for trial until the District Court has decided Ho's appeal of the Judgment Denying Discharge. In the event that the District Court overturns the Judgment Denying Discharge, Plaintiff will be required to pursue the 523 Action to obtain a recovery against Ho. The 523 Action is based upon the same nucleus of operative facts as this action. The potential for duplicative litigation weighs against proceeding to trial at this time. In addition to wasting judicial resources, the additional costs resulting from a duplicative trial would decrease the recoveries available for distribution to creditors by the Plan Administrator.

A Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** The parties shall file a Joint Status Report, which shall discuss the status of the appeal of the Judgment Denying Discharge, by no later than **October 7, 2019**. Once the District Court has adjudicated the appeal, the Court will determine whether it is appropriate to restore this matter to the trial calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Ho is the only remaining defendant in this action. On April 17, 2018, the Court approved a stipulation dismissing Benjamin Kirk with prejudice. Doc. No. 91.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By
James Andrew Hinds Jr
Paul R Shankman
Rachel M Sposato

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

Bradley D. Sharp

Represented By
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#2.00 HearingRE: [70] Application for Compensation Brief in Support of First Interim Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses on Behalf of Law Office Of Lionel E. Giron for Debtors In Possession For Period of November 15, 2018 through June 12, 2019 for Lionel E Giron, Debtor's Attorney, Period: 11/15/2018 to 6/12/2019, Fee: \$13,546.25, Expenses: \$482.75.

Docket 70

Tentative Ruling:

7/8/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below, provided that by no later than **July 16, 2019**, applicant files a declaration that complies with Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J).

Fees: \$13,546.25

Expenses: \$482.75

The Court notes that some of applicant's time entries are not being tracked in one-tenth of an hour increments (.1) as required by LBR 2016-1(a)(1)(E)(iii). Applicant is cautioned that failure to comply with LBR 2016-1(a)(1)(E)(iii) in the future may result in the Court striking noncompliant time entries in their entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 9, 2019

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#100.00 Hearing

RE: [775] Motion for order confirming chapter 11 plan Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr. and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service

fr. 4-10-19; 6-11-19

Docket 775

Tentative Ruling:

7/8/2019

The tentative ruling is to CONTINUE the Confirmation Hearing to **August 14, 2019 at 11:00 a.m.** The Court has reviewed the Debtor's status report filed on July 3, 2019 [Doc. No. 822], which states that the Debtor is not yet in a position to confirm its Plan. By no later than August 7, 2019, the Debtor is directed to file a status report updating the Court on the status of the sale of the 5908 1/2 Fayette Street Property.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 9, 2019

Hearing Room 1568

11:00 AM

CONT...

Monge Property Investments, Inc.

Roksana D. Moradi-Brovia

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:15-17706 Charles M. Fries

Chapter 7

#1.00 APPLICANT: DANNING, GILL, DIAMOND & KOLLITZ, LLP, Attorney for Trustee

Hearing re [80] and [81] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

7/8/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$35,964.50 approved, but payment shall be limited to \$17,481.92 per Trustee's request [*See* Doc. No. 80]

Expenses: \$2,353.28 approved, but payment shall be limited to \$1,143.90 per Trustee's request [*See* Doc. No. 80]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Charles M. Fries

Represented By
Eileen Kusseyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

CONT... Charles M. Fries

Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:15-17706 Charles M. Fries

Chapter 7

#2.00 APPLICANT: SAM S LESLIE, Trustee

Hearing re [80] and [81] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/8/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,683.22

Total Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Charles M. Fries

Represented By
Eileen Keusseyan

Trustee(s):

Sam S Leslie (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

CONT...

Charles M. Fries

Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:15-17706 Charles M. Fries

Chapter 7

#3.00 APPLICANT: LEA ACCOUNTANCY LLP, Accountant for Trustee

Hearing re [80] and [81] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

7/8/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,535 approved, but payment shall be limited to \$4,148.77 per Trustee's request [*See* Doc. No. 80]

Expenses: \$147.55 approved, but payment shall be limited to \$71.72 per Trustee's request [*See* Doc. No. 80]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Charles M. Fries

Represented By
Eileen Keusseyan

Trustee(s):

Sam S Leslie (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

CONT...

Charles M. Fries

Eric P Israel
Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#4.00 Hearing
RE: [61] Motion to Reconsider (related documents 49 Order on Motion to
disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee (BNC-
PDF))

fr. 6-4-19; 6-18-19

Docket 61

Tentative Ruling:

7/8/2019

For the reasons set forth below, the Reconsideration Motion is GRANTED. The Debtor's appearance is excused.

Pleadings Filed and Reviewed

1. Order Granting United States Trustee's Motion to Disgorge Attorney Compensation Under 11 U.S.C. § 329 [Doc. No. 49] (the "Disgorgement Order")
2. Notice of Motion and Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 61] (the "Reconsideration Motion")
3. Opposition of the United States Trustee to Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 63] (the "Opposition")
4. Order Setting Hearing on "Motion for Reconsideration on Court Granting Disgorgement of Fees" [Doc. No. 65]
5. Stipulation to Continue Hearing Re: Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 69]
6. Order Approving Stipulation to Continue Hearing Re: Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 72]
7. Substitution of Attorney [Doc. No. 74]
8. Second Stipulation to Continue Hearing Re: Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 79]
9. Order Approving Second Stipulation to Continue Hearing Re: Motion for Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 81]
10. Notice of Withdrawal of Opposition of the United States Trustee to Motion for

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Reconsideration on Court Granting Disgorgement of Fees [Doc. No. 90]

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary chapter 11 petition for relief on October 16, 2018. On November 23, 2018, the Debtor filed an application to employ Leo Fasen ("Counsel") as his chapter 11 bankruptcy counsel [Doc. No. 17] (the "First Employment Application"). After the United States Trustee (the "UST") filed a timely objection and request for hearing [Doc. No. 18], the Debtor filed an amended application to employ [Doc. No. 19] (the "Second Employment Application"). Counsel also simultaneously filed an application for approval of compensation [Doc. No. 20] (the "Fee Application"). The UST filed a timely opposition to the Second Employment Application and Fee Application [Doc. No. 24].

The UST also sought conversion of the case pursuant to § 1112(b) [Doc. No. 21]. On January 17, 2019, the Court entered an order granting the UST's motion and converting this case to a case under chapter 7 [Doc. No. 31].

Summary of Disgorgement Motion

The UST also moved for an order requiring Counsel to disgorge the entire \$8,000 in fees he received in connection with his representation of the Debtor on the basis that: (a) Counsel failed to obtain authorization of his employment, (b) Counsel's compensation exceeded the reasonable value of services provided to the Debtor, and (c) Counsel made misrepresentations and contradicting statements to the Court in his employment applications [Doc. No. 40] (the "Disgorgement Motion"). Counsel did not file an opposition to the Disgorgement Motion or appear at the hearing to contest the Court's tentative ruling. Accordingly, on April 19, 2019, the Court entered an order granting the Disgorgement Motion and directing Counsel to disgorge \$8,000 in fees to the Chapter 7 Trustee by May 19, 2019 [Doc. No. 49] (the "Disgorgement Order").

Summary of Motion to Reconsider Disgorgement Motion

On May 7, 2019, Counsel filed a motion requesting that the Court reconsider the Disgorgement Order pursuant to Civil Rule 60(b) based on the limited grounds that

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the Court reduce the amount of fees required to be disgorged from \$8,000 to \$4,500 in order to reflect and conform with the amount of fees Counsel was actually paid by the Debtor in connection handling the Debtor's bankruptcy petition [Doc. No. 61] (the "Reconsideration Motion"). In support of the Reconsideration Motion, Counsel attached a declaration from the Debtor confirming that he only paid Counsel \$4,500 [*Id.*].

Summary of the UST's Opposition

On May 9, 2019, the UST filed an Opposition [Doc. No. 63] arguing that reconsideration is unwarranted because (a) counsel failed to oppose the Disgorgement Motion or appear at the hearing, (b) there is no newly discovered evidence to support relief under Civil Rule 60, (c) any request for relief under Civil Rule 59 would be untimely, and (d) the evidence filed in support of the Reconsideration Motion is insufficient based on the numerous contradicting representations in the record.

Order Setting Evidentiary Hearing on Reconsideration Motion

Based on the Court's review of the Reconsideration Motion and Opposition, the Court issued an order setting an evidentiary hearing for June 4, 2019 and directing the Debtor to appear to provide testimony under oath regarding Counsel's fees [Doc. No. 65].

Counsel and the UST subsequently stipulated to continue the June 4, 2019 evidentiary hearing to July 10, 2019 [69, 72, 79 & 81].

Summary of Debtor's Supplemental Declaration

On July 2, 2019, the Debtor, acting through new counsel, filed a supplemental declaration that again states that as best as he can remember, he only paid Counsel a total of \$4,500 in connection with this case [Doc. No. 87] (the "Supplemental Debtor Decl."). The Debtor further states that he has had difficulties remembering the details from the relevant time period because he was recovering from serious medical issues. Finally, the Debtor requests that the Court excuse him from personally appearing at the Evidentiary Hearing because it is difficult and painful for him to walk. The Debtor states that he is willing to appear by Court Call if the Court finds it

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appropriate.

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UST's Notice of Withdrawal of Opposition

On July 3, 2019, the UST filed a Notice of Withdrawal of its Opposition based on its review of the Debtor's Supplemental Declaration [Doc. No. 90]. The UST states that it has no objection to the Court entering an amended Disgorgement Order requiring Counsel to disgorge only \$4,500, but requests that the amended order require Counsel to immediately disgorge the funds to the Chapter 7 Trustee and file a declaration so stating along with proof of payment.

II. Findings of Fact and Conclusions of Law

Civil Rule 60(b)(1), made applicable herein by Bankruptcy Rule 9024, provides in relevant part:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . .

Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024.

Excusable neglect "encompass[es] situations in which the failure to comply with a filing deadline is attributable to negligence," and includes "omissions caused by carelessness." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 388, 394, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). The determination of whether neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* at 395. Additionally, Civil Rule 60(b)(6) authorizes the Court to relieve a party from a final judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

In this case, Counsel states that he tried to obtain a declaration from the Debtor regarding the actual amount of fees he received from the Debtor but was unable to do so in time for the hearing. Additionally, the Debtor has since retained other counsel and filed a supplemental declaration confirming that he only paid Counsel \$4,500. In view of the Debtor's Supplemental Declaration, the Court finds it appropriate to excuse the Debtor's attendance at the Evidentiary Hearing and find that Counsel only

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received a total of \$4,500 in compensation from the Debtor in connection with pre- and post-petition representation of the Debtor. Because the Disgorgement Order was predicated on the Court's finding that Counsel *received* \$8,000 in compensation – a finding that is now no longer supported by the record – relief appears warranted under Civil Rule 60(b)(6). Alternatively, the Court finds that relief is warranted under Civil Rule 60(b)(1) based on Counsel's excusable neglect. In so ruling, the Court finds that Counsel's delay was relatively short, has not resulted in any direct prejudice to parties in interest and has not unfairly hindered the Chapter 7 Trustee's ability to administer the estate.

III. Conclusion

For the reasons set forth above, the Reconsideration Motion is GRANTED. Counsel is directed to disgorge \$4,500 in fees to the Chapter 7 Trustee by no later than **July 19, 2019** and file a declaration with the Court confirming that payment has been timely made. If Counsel fails to either timely make the disgorgement payment or file a declaration in accordance with this tentative ruling, the Court will issue an order directing Counsel to appear and show cause why the Court should not impose sanctions for failure to comply with an order of the Court.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Leo Fasen

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Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:11-57514 Sondra Derderian

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#5.00 Show Cause Hearing
RE: [339] Notice to creditors (BNC-PDF) re 338 . Order Requiring Reorganized Debtor To Appear And Show Cause Why This Case Should Not Be Dismissed. 7-10-19 at 10:00 a.m (Lomeli, Lydia R.)

Docket 339

***** VACATED *** REASON: CONTINUED 9-18-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A. Stubbe

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2:13-20738 Sergio Miranda

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Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#6.00 Hearing
 RE: [9] Motion to Dismiss Adversary Proceeding (Motion for summary
 judgment)

 FR. 5-21-19

Docket 9

Tentative Ruling:

7/9/2019

The parties were previously notified by the Court that Bank of America's Motion to Dismiss would be treated as a motion for summary judgment. The Court will enter summary judgment in Bank of America's favor.

Pleadings Filed and Reviewed

1. Complaint for Breach of Contract, Declaratory Judgment and Injunction [Adv. Doc. No. 1] (the "Complaint")
2. Bank of America, National Association's Motion to Dismiss Complaint [Adv. Doc. No. 9] (the "Motion to Dismiss")
 - a. Bank of America, National Association's Request for Judicial Notice in Support of Motion to Dismiss Complaint [Adv. Doc. No. 9-1] (the "RJN")
3. Notice of Motion to Dismiss Adversary Complaint [Adv. Doc. No. 10]
4. Opposition by Plaintiffs to Defendant Bank of America's Motion to Dismiss Adversary Complaint [Adv. Doc. No. 12]
 - a. Objection to Bank of America's Request for Judicial Notice Re Motion to Dismiss [Adv. Doc. No. 12-1] (the "Opposition to RJN")
5. Bank of America, National Association's Reply to Plaintiffs' Opposition to Motion to Dismiss Complaint [Adv. Doc. No. 13] (the "Reply")
 - a. Bank of America, National Association's Response to Plaintiffs' Objections to Request for Judicial Notice [Adv. Doc. No. 14] (the "RJN Response")
6. Order (1) Notifying Parties that Motion to Dismiss Will be Treated as Motion for Summary Judgment; (2) Setting Deadlines for Parties to Submit Any Additional

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Materials Pertinent to the Motion; and (3) Continuing Hearing Date [Adv. Doc. No. 15]

7. Declaration of Bank of America Representative in Support of Motion for Summary Judgment [Adv. Doc. No. 23] (the "Magaddino Decl.")
8. Plaintiffs' Opposition to Motion for Summary Judgment by Defendant Bank of America N.A. [Adv. Doc. No. 24] ("Plaintiffs' Supplemental Opposition")

I. Facts and Summary of Pleadings

Sergio Miranda and Esmeralda Miranda (together, the "Debtors") filed a voluntary chapter 11 petition (the "Bankruptcy Case" or "Main Case") on April 24, 2013 (the "Petition Date") [2:13-bk-20738-TD]. On December 6, 2013, the Debtors filed their Chapter 11 Plan of Reorganization [Main Case Doc. No. 103] (the "Plan"). On August 7, 2014, the Debtors obtained an Order Confirming Chapter 11 Plan of Reorganization [Main Case, Doc. No. 139] (the "Confirmation Order"). On February 3, 2015, the Court entered an Order Granting Motion for Final Decree [Doc. No. 155] and closed the Debtors' case on March 13, 2015.

On February 23, 2019, the Debtors moved to reopen their case to initiate an adversary proceeding to enforce the provisions of their confirmed Plan, which the Court granted by order entered February 27, 2019 [Doc. Nos. 161 & 163]. On February 25, 2019, the case was transferred from Judge Thomas B. Donovan to Judge Ernest M. Robles.

Summary of Complaint

On March 31, 2019, the Debtors initiated an adversary proceeding by filing a complaint against Bank of America National Association ("Bank of America") and Shellpoint Mortgage Servicing LLC ("Shellpoint," and together with Bank of America, the "Defendants") asserting claims for breach of contract, declaratory judgment and injunction [2:19-ap-01079-ER, Adv. Doc. No. 1] (the "Complaint").

The allegations of the Complaint are as follows:

- Pre-petition, the Debtors acquired interests in two parcels of real property: (1) 1123 West 119th Street, Los Angeles, CA 90044 (the "1123 Property"); and (2) 1118 West 119th Street, Los Angeles, CA 90044 (the "1118 Property," and

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together with the 1123 Property, the "Properties"). Complaint, ¶¶ 8-9. Bank of America funded the loans for both Properties and held the promissory notes and deeds of trust against the Properties. *Id.*, ¶ 11.

- The Debtors fell behind on their mortgage payments. *Id.*, ¶ 10. On April 24, 2013, the Debtors filed the Bankruptcy Case to modify their mortgages with Bank of America. *Id.*, ¶¶ 10-11.
- Bank of America filed proofs of claim in the Bankruptcy Case in support of both of its loans. *Id.*, ¶ 12.
- On April 24, 2013, the Debtors filed a chapter 11 plan of reorganization (the "Plan"). *Id.*, ¶ 13. The creditors who were entitled to vote on the Plan voted and on August 7, 2014, the Bankruptcy Court entered an order confirming the Plan. *Id.*
- Paragraphs 5a and 5b of the Plan describe the treatment for Defendants' claims regarding the Properties. *Id.*, ¶ 17. Paragraph 5a describes the treatment for the 1118 Property. *Id.* Among other things, Paragraph 5b states that the Debtors were responsible for making all escrow payments directly after the effective date of the Plan. *Id.* Paragraph 5b describes the treatment for the 1123 Property and again provides that the Debtors would be responsible for direct payment of escrow fees. *Id.*, ¶ 18.
- Post-petition, Bank of America hired Ditech Financial LLC ("Ditech") to service the mortgage on the 1118 Property and the Debtors began making payments to Ditech. *Id.*, ¶ 19.
- After making more than a year of Plan payments to Ditech, Ditech informed the Debtors that they owed escrow fees of \$54,635.64 and corporate advances in the sum of \$140,885.45 in connection with the 1118 Property. *Id.*, ¶ 20.
- During the pendency of the Bankruptcy Case, and before the Plan was confirmed, Bank of America appointed Nationstar Mortgage LLC ("Nationstar") to service the mortgage for the 1123 Property and the Debtors began making payments to Nationstar. *Id.*, ¶ 21. In the later part of 2018, Shellpoint informed the Debtors that it was the new servicer of the loan and the Debtors have been making payments to Shellpoint ever since. *Id.*
- Post-confirmation, despite the fact that they continued making payments in accordance with the Plan, the Debtors received mortgage statements that did not reflect the terms of the confirmed Plan in several respects. *Id.*, ¶ 22.
- The Debtors' attempts to obtain the servicers' compliance with the terms of

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the Plan have proved abortive. *Id.*, ¶ 22.

In support of the Complaint, the Debtors attached the Plan (Ex. 1) and the Order confirming the Plan (Ex. 2).

Based on the foregoing allegations, the Debtors assert that they are entitled to damages arising from the Defendants' alleged breach of contract ("Claim One"). The Debtors allege that the Plan constituted a written contract between the Debtors and Defendants, that the Debtors have substantially performed all of the terms required of them, that the Defendants breached the contract, and that the Debtors have suffered harm as a result of Defendants' breach.

The Debtors also seek entry of a declaratory judgment in their favor finding that the Defendants are bound by the Plan and ordering the Defendants to comply with the terms of the Plan ("Claim Two").

Summary of Bank of America's Motion to Dismiss

On April 24, 2019, Bank of America moved to dismiss the Complaint, without leave to amend pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. First, Bank of America states that it cannot have been bound by the Debtors' Plan because it was neither a servicer nor lender of either loan for the Properties at the time the Debtors' Plan was confirmed because, prior to confirmation, Assignments of Deeds of Trust were executed and recorded conveying Bank of America's rights to third parties. In support of this argument, Bank of America requests the Court take judicial notice of twelve documents relevant to establishing that it assigned its rights away prior to confirmation of the Debtors' Plan. Therefore, Bank of America argues that the Debtors' breach of contract claims must fail because the Plan did not create a contract between the Debtors and Bank of America. Alternatively, Bank of America contends that dismissal is appropriate because the Complaint fails to adequately state a claim for relief because it fails to adequately set forth what Bank of America failed to perform that subjects it to a breach of contract claim.

With respect to Claim Two, Bank of America argues that because the Debtors cannot succeed on their breach of contract claim against it, the Debtors' request for declaratory and injunctive relief must also be dismissed because they are not

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independent claims that can stand alone.

Bank of America also highlights that this is the Debtors' second attempt to hold it accountable for the alleged breach of contract claim. More specifically, Bank of America states that on May 12, 2017, the Debtors filed a lawsuit in state court against Bank of America, Ditech, and Nationstar. However, Ditech filed a demurrer which was sustained without leave to amend, Nationstar obtained judgment in its favor pursuant to a motion for summary judgment, and Bank of America was dismissed on August 8, 2018 pursuant to its request for dismissal.

Summary of the Debtors' Opposition

The Debtors make the following arguments in opposition to the Motion to Dismiss. First, the Debtors argue that the motion should be dismissed because Bank of America only served Debtors' counsel with the motion and failed to serve the Debtors directly as required by Local Bankruptcy Rule ("LBR") 9013-1(d)(1). Next, the Debtors argue that Bank of America is precluded from challenging the Confirmation Order under the principle of res judicata because it received notice of the Debtors' solicitation package and could have raised these arguments in opposition to plan confirmation. The Debtors also argue that Bank of America has not presented any evidence demonstrating that it transferred the underlying promissory notes along with the deeds of trust and, as a result, the alleged transfers may not have been legally effective.

The Debtors further argue that even if Bank of America legally assigned its rights away before the Plan was confirmed, it was still bound by the Plan because it had a full and fair opportunity to object and it failed to do so. The Debtors also appear to argue that Bank of America's argument that it assigned its interests away pre-confirmation is an affirmative defense and that raising that defense in connection with its Rule 12(b)(6) motion is not procedurally proper.

Next, the Debtors argue that to the extent Bank of America is attempting to assert that res judicata precludes the Debtors from pursuing their claims against it in this action because of its dismissal from the state court action, such argument must fail because the dismissal was without prejudice. Finally, the Debtors argue that the Complaint contains sufficient allegations to adequately plead claims for relief for

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breach of contract and declaratory relief because of the liberal pleading rules in federal courts.

The Debtors also raise a number of objections to Bank of America's request for judicial notice to the extent that it seeks to introduce the requested documents for the truth of the facts contained within those documents and objects to Exhibits I and J on the basis that those documents lack relevance with the matters at issue in this case.

Summary of Bank of America's Reply in Support of its Motion to Dismiss

Bank of America filed a reply responding to the Debtors' arguments as follows. First, Bank of America maintains that its service of the motion was proper under applicable local rules. Second, Bank of America argues that res judicata is inapplicable because it is illogical to argue that it is bound by a Plan that affects property it had no legal interest or rights in just because the Debtors mistakenly listed it as the holder of the secured claims in its Plan. Bank of America also argues that the Debtors cannot satisfy a necessary res judicata element because there was no prior action between Bank of America and the Debtors.

Next, Bank of America states that it does not seek to have this Complaint dismissed on the grounds that it was previously dismissed from the state court action and that it was simply highlighting the Debtors' litigation history to provide further support for the baseless claims the Debtors are presently asserting against it. Finally, Bank of America reiterates that the allegations in the Complaint fail to adequately state claims for relief.

Bank of America also filed a response to the Debtor's objection to its request for judicial notice setting forth the basis for why the Debtors' objection should be overruled.

Order Notifying Parties that Motion to Dismiss Will be Treated as Motion for Summary Judgment

After reviewing Bank of America's Motion to Dismiss, which contains several exhibits going beyond the four corners of the Debtors' Complaint, the Court issued an order informing the parties that the Motion to Dismiss would be treated as a motion

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for summary judgment [Adv. Doc. No. 15] (the "Order"). The Order provided the parties the opportunity to submit additional materials for the Court's consideration in connection with the Motion. *See* Fed. R. Civ. P. 12(b) (made applicable pursuant to Fed. R. Bankr. P. 7012) ("If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion"). The deadline to submit additional materials was June 19, 2019.

Summary of Bank of America's Supplemental Declaration

On June 12, 2019, Bank of America submitted the declaration Susan E. Magaddino, Assistant Vice President of Bank of America [Adv. Doc. No. 23] (the "Magaddino Declaration" or "Magaddino Decl."), which attached additional evidence in support of the motion. In addition to referring to the documents filed with its request for judicial notice, Bank of America also attached, among other things, pre-confirmation date letters from Bank of America to the Debtors informing them that the servicing of the respective loans for the Properties were being transferred to new servicers [Adv. Doc. No. 23, Ex. 2 & 3].

Summary of the Debtors' Supplemental Opposition

On June 19, 2019, the Debtors filed a supplemental opposition responding to the Magaddino Declaration [Adv. Doc. No. 24] (the "Supplemental Opposition"). The Debtors' Supplemental Opposition does not contain any additional evidence for the Court's consideration. Instead, the Debtors repeat their contention that Bank of America has not presented sufficient evidence establishing that it was not bound by the Plan because there is no evidence that Bank of America transferred the underlying promissory notes along with the deeds of trust.

II. Findings of Fact and Conclusions of Law

A. The Debtors Have Not Been Denied Due Process

As a preliminary matter, the Court finds that the Debtors have not been denied due process by not being individually served with the Motion to Dismiss because they had

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a full and fair opportunity to respond to the motion. Furthermore, the Debtors were notified of the Court's intention to convert the Motion to Dismiss into a motion for summary judgment and submitted a timely Supplemental Opposition.

B. Request for Judicial Notice

In view of the Court's conversion of the Motion to Dismiss into a motion for summary judgment, the Court need not rule on the parties' dispute over whether and to what extent this Court may grant Bank of America's requests for judicial notice. Instead, the Court considers all of the evidence in the record and reviews such evidence in the light most favorable to the Debtors, as the non-moving parties, with all justifiable inferences drawn in their favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Easley v. City of Riverside*, 765 Fed. Appx. 282, 283 (9th Cir. 2019) (same).

C. Applicable Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (incorporated by Bankruptcy Rule 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party has no burden to negate or disprove matters on which the non-moving party will have the burden of proof at trial. *Sluimer v. Verity, Inc.*, 606 F.3d 584, 586 (9th Cir. 2010). The moving party need only point out to the court that there is an absence of evidence to support the non-moving party's case. *Id.* (citing *Celotex*, 477 U.S. at 325). The burden then shifts to the non-moving party to "designate specific facts showing that there is a genuine issue for trial." *Id.* (citing *Celotex*, 477 U.S. at 324).

Federal Rule of Civil Procedure ("Rule") 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. 317, 322.

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1. The Debtors Lack Standing to Challenge the Effectiveness of Bank of America's Assignments

The Debtors challenge the validity of Bank of America's assignment of its interests in the relevant loans to Green Tree and Nationstar on the grounds that Bank of America has not produced any evidence to establish that it assigned the promissory notes along with the deeds of trust. Because the Debtors lack standing to challenge the efficacy of the assignments, this argument fails. **[Note 1]**

Generally, "third parties do not have enforceable contract rights unless they are intended beneficiaries." *Dicion v. Mann Mortg., LLC*, 718 F. App'x 476, 478 (9th Cir. 2017). Accordingly, a third-party borrower lacks standing to challenge the effectiveness of an assignment unless the assignment is void, as opposed to voidable. *Id.*; see also *Banares v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 29909, 2014 WL 985532, at *5 (N.D. Cal. Mar. 7, 2014). In *Barnes*, the court determined that violations of a purchase and sale agreement – such as failing to assign the deed of trust or endorse the note – rendered the assignment of a mortgage voidable, and not void. 2014 U.S. Dist. LEXIS 29909, at *5 (rejecting *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079, 160 Cal. Rptr. 3d 449 (2013)); see also *Christie v. Bank of New York Mellon, N.A.*, 617 Fed. Appx. 680, 681 (9th Cir. 2015) (As a borrower, Christie does not have standing under California law to challenge irregularities in the assignment of her Note or Deed of Trust because those instruments are negotiable and her obligations thereunder remain unchanged even if her creditor changes). In this case, the Debtors' challenges to the relevant assignments would render the assignments voidable, not void. Therefore, the Debtors have not demonstrated that they have standing to attack the assignments on this basis.

Similarly, the Debtors lack standing to assert that the assignments were defective because Bank of America has not established that MERS was authorized to assign Bank of America's rights under the respective promissory notes. See e.g., *Dicion v. Mann Mortg., LLC*, 718 F. App'x 476, 478 (9th Cir. 2017) ("A challenge to the validity of an assignment based on the executor's lack of authority would make the assignment voidable, not void"); *Paik-Apau*, 2012 U.S. Dist. LEXIS 151397, 2012 WL 5207495, at *5 ("Paik-Apau's challenges to the assignments of her loan go to whether those assignments are voidable, as she argues that persons or entities lacked authority to assign the loan documents. She lacks standing to make those

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challenges"); *Deutsche Bank Tr. Co. v. Beesley*, 2012 U.S. Dist. LEXIS 156838, 2012 WL 5383555, at *6 (D. Haw. Oct. 30, 2012) ("Nor do the Beesleys create standing to contest the validity of the assignments by questioning the power of any person or entity making the assignments"); *Siliga v. Mortgage Electronic Registration Sys.* (2013) 219 Cal. App. 4th 75 (holding that borrower could not challenge MERS's authority to assign note and deed of trust when language of deed of trust expressly permitted MERS to exercise all rights and interests of lender, which necessarily included authority to assign).

This Court is aware of the California Supreme Court's decision, *Yvanova v. New Century Mortg. Corp.*, in which the court held that a "home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale." 62 Cal. 4th 919, 942-43, 199 Cal. Rptr. 3d 66, 365 P.3d 845 (2016). However, the *Yvanova* court expressly limited its application to instances in which a borrower has suffered injury arising from a nonjudicial foreclosure. *Id.* at 924. Furthermore, since *Yvanova's* ruling, "courts have confirmed that the decision is expressly limited to the post-foreclosure context," which makes it inapplicable to the facts of this case. *Watson v. Bank of Am., N.A.*, 2016 U.S. Dist. LEXIS 154375, at *46-49 (S.D. Cal. Nov. 7, 2016) (citing *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 815, 199 Cal. Rptr. 3d 790 (2016) (borrower lacked standing to challenge cancellation of assignment of deed of trust prior to a foreclosure and because the allegations render the assignment voidable, not void)).

Moreover, the *Yvanova* court stated that its ruling was predicated on its "concern[] only with prejudice in the sense of an injury sufficiently concrete and personal to provide standing" and concluded that a borrower meets the general standard for standing to sue by showing an invasion of his or her legally protected interest. 62 Cal. 4th at 937-38. In this case, the Debtors have not established that their alleged injuries stem from the purportedly ineffective assignments. For example, the Debtors do not assert that both Bank of America and the assignees of the loans have attempted to collect under the loans or that they have suffered a wrongful foreclosure. Rather, it appears the Debtors' prejudice, if any, is entirely one of their own making as a result of their failure to properly name Green Tree and Nationstar in

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their Plan or later seek to amend the Plan to name those parties. Therefore, the Court finds that the Debtors have not alleged any harm, injury or prejudice "sufficiently concrete and personal to provide standing" to challenge the assignments. *Yvanova*, 62 Cal. 4th at 937.

2. The Debtors are Estopped From Challenging the Effectiveness of Bank of America's Assignment to Green Tree

The Court also finds that the Debtors are estopped from challenging the effectiveness of the assignment from Bank of America to Green Tree with respect to the 1118 Property. The doctrine of judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001).

As Bank of America highlights, on June 20, 2013, almost six months *before* the Debtors filed the Plan, Green Tree file a Notice of Transfer of Claim [Main Case, Doc. No. 46] giving the Debtors notice of Bank of America's assignment of its interests in the 1118 Property. The Debtors subsequently acknowledged Green Tree as the legal assignee by entering into a *Stipulation Re: Treatment of Creditor's Claim Under Debtors' Chapter 11 Plan of Reorganization* with Green Tree [Main Case, Doc. No. 113] (the "Green Tree Stipulation"), which this Court also approved [Main Case, Doc. No. 117]. The Green Tree Stipulation provides, in relevant part:

The terms of this Stipulation may not be modified, altered, or changed by the Debtors' Chapter 11 Plan; any subsequently filed amended or modified Chapter 11 Plan of Reorganization or any order on the foregoing without the express written consent of the Creditor. The above terms of this Stipulation shall be incorporated into the Debtors' Chapter 11 Plan and/or any subsequently filed amended or modified Chapter 11 Plan and confirmation order thereon. *In the event of a conflict between a term or provisions of this Stipulation and Debtors' Chapter 11 Plan, or any amendments or modifications thereto, the terms of this Stipulation shall control.*

Green Tree Stipulation, ¶ 14 (emphasis added).

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Therefore, despite the fact that the Debtors' Plan identifies Bank of America as the holder of the Class 5(a) claim [Main Case, Doc No. 103], any reference to Bank of America was effectively replaced by the relevant provisions of the Green Tree Stipulation. Furthermore, based on this Court's independent review of relevant documents filed in the main case, the Court notes that Green Tree was the *only* impaired creditor to cast ballots in favor of the Debtors' Plan and, without Green Tree's votes, the Debtors would not have obtained confirmation of their Plan [*See* Main Case, Doc. Nos. 134, 135 & 136].

Based on the foregoing, the Court finds that the Debtors are estopped from now taking the contradictory position that Bank of America's assignment was ineffective – i.e. that Green Tree did not have the authority to take any legal actions with respect to the 1118 Property – to gain a tactical advantage against Bank of America in this action. The Court also notes the absurdity in this argument because if the Green Tree assignment was ineffective, then the Confirmation Order must be vacated and there would no longer be any binding Plan that could support the Debtors' breach of contract claim in this action.

For the same reasons, the Court finds that the Debtors have waived and forfeited any rights to challenge the effectiveness of the 1118 Property assignment.

3. Res Judicata is Inapplicable

Pursuant to 11 U.S.C. § 1141(a), ". . .the provisions of a confirmed plan bind the debtor . . . any entity acquiring property under the plan, and any creditor . . . whether or not the claim or interest of such creditor . . . is impaired under the plan and whether or not such creditor . . . has accepted the plan." "Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect." *Trulia v. Barton*, 107 F.3d 685 (9th Cir. 1995).

In this case, the undisputed facts demonstrate that Bank of America ceased to be a creditor of the Debtors' prior to the filing, and confirmation, of the Plan. Accordingly, the Court rejects the Debtors' contention that the Plan should be afforded a *res judicata* effect to bar Bank of America from raising this issue because the argument incorrectly presupposes that Bank of America was a creditor or party-in-

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interest that could be bound by the Plan, despite having no interest legal or equitable interest in the property dealt with by the Plan.

4. Bank of America is Entitled to Judgment as a Matter of Law

Turning to the merits, the Court finds that Bank of America is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. Based on this Court's review of the relevant pleadings and evidence, the Court finds there can be no genuine dispute as to the following material facts:

1123 & 1123 ½ W 119th Street, Los Angeles, CA 90044 (the "1123 Property")

- i. On February 2, 2007, the Debtors signed a promissory note to obtain a loan (the "1123 Loan") from Countrywide Home Loans, Inc. ("Countrywide") [Magaddino Decl., Ex 1].
- ii. The 1123 Loan was secured by a deed of trust (the "1123 DOT") and recorded against the 1123 Property [RJN, Ex. A].
- iii. The 1123 DOT names Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for Countrywide and Countrywide's successors and assigns and designates MERS as the beneficiary [RJN, Ex. A].
- iv. The 1123 DOT states that MERS "has the right: to exercise any or all of those interests, including but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender" [RJN, Ex. A].
- v. On July 1, 2008, Bank of America acquired Countrywide. [**Note 2**]
- vi. Prior to the Debtors' bankruptcy filing, Bank of America acted as the servicer of the 1123 Loan [Magaddino Decl., ¶ 5].
- vii. On April 24, 2013, the Debtors filed a voluntary joint chapter 11 petition for relief [Bankruptcy Case No. 2:13-bk-20737-ER].
- viii. On April 10, 2013, Bank of America sent the Debtors a letter informing them that the servicing of the 1123 Loan would be transferred to Nationstar Mortgage LLC ("Nationstar") effective May 1, 2013 [Magaddino Decl., Ex. 2].
- ix. On May 14, 2013, MERS recorded an assignment of deed of trust assigning the 1123 DOT to Nationstar [RJN, Ex. B].
- x. On December 6, 2013, the Debtors filed their chapter 11 plan of reorganization (the "Plan") [Main Case, Doc. No. 103].

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- xi. On August 7, 2014, the Court entered an Order Confirming the Debtors' Plan [Main Case, Doc. No. 139].

1118 W 119th Street, Los Angeles, CA 90044 (the "1118 Property")

- i. On May 31, 2007, the Debtors signed a promissory note to obtain a loan (the "1118 Loan") from Countrywide [Magaddino Decl., Ex. 3].
- ii. The 1118 Loan was secured by a deed of trust (the "1118 DOT") and recorded against the 1118 Property [RJN, Ex. C].
- iii. The 1118 DOT names MERS as nominee for Countrywide and Countrywide's successors and assigns and designates MERS as the beneficiary [RJN, Ex. C].
- iv. The 1118 DOT states that MERS "has the right: to exercise any or all of those interests, including but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender" [RJN, Ex. C].
- v. On May 13, 2011, MERS recorded an assignment of deed of trust assigning the 1118 DOT to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP ("BAC") [RJN, Ex. D].
- vi. On July 1, 2011, BAC merged into Bank of America, N.A. [Magaddino Decl., fn. 2, Main Case, Doc. No. 70, Ex. A].
- vii. Prior to the Debtors' bankruptcy filing, Bank of America acted as the servicer of the 1118 Loan [Magaddino Decl., ¶ 10].
- viii. On April 24, 2013, the Debtors filed a voluntary joint chapter 11 petition for relief [Bankruptcy Case No. 2:13-bk-20737-ER].
- ix. On May 11, 2013, Bank of America sent the Debtors a letter informing them that the servicing of the 1118 Loan would be transferred to Green Tree Servicing LLC ("Green Tree") effective June 1, 2013 [Magaddino Decl., Ex. 3].
- x. On June 20, 2013, Green Tree file a Notice of Transfer of Claim giving the Debtors notice of Bank of America's assignment of its interests in the 1118 Property [Main Case, Doc. No. 46].
- xi. On December 6, 2013, the Debtors filed their Plan [Main Case, Doc. No. 103].
- xii. On January 28, 2014, the Debtors filed a *Stipulation Re: Treatment of Creditor's Claim Under Debtors' Chapter 11 Plan of Reorganization* with Green Tree (the "Green Tree Stipulation"), which this Court approved

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[Main Case Doc. Nos. 113, 117].

xiii. Green Tree cast the only ballots in favor of the Debtors Plan [Main Case, Doc. Nos. 134, 135 & 136].

xiv. On August 7, 2014, the Court entered an Order Confirming the Debtors' Plan [Main Case, Doc. No. 139].

The Debtors claim that Bank of America was bound by the terms of their confirmed Plan and subsequently breached those terms by sending them mortgage statements that do not reflect the terms of the confirmed Plan. However, the evidence before the Court, submitted by Bank of America, establishes that Bank of America was neither the holder of the notes and deeds of trust for the Properties, nor the servicers of the loans as of the date the Debtors obtained confirmation of their Plan. Despite being afforded an opportunity, the Debtors have not responded with any evidence to controvert Bank of America's evidence. Therefore, on this record, the Court finds that Bank of America was not bound by the Plan because it had no legal or equitable interest in the property dealt with by the Plan.

Accordingly, the Bank is entitled to judgment in its favor with respect to the Debtors' breach of contract claim. Furthermore, because the Debtors have not established as a matter of law that Bank of America was bound by the Plan, the Court will also enter judgment in favor of Bank of America on the Debtors' second claim for relief for declaratory and injunctive relief.

III. Conclusion

For the reasons set forth above, the Court will enter summary judgment in Bank of America's favor.

Bank of America is directed to submit an order indicating that judgment has been granted in its favor within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: This argument also improperly tries to shift the burden of production onto Bank of America.

Note 2: 12 U.S.C. § 215a(e) ("The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, . . . and all other rights and interests . . ., in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the merging banks or banking associations at the time of the merger . . .").

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

BANK OF AMERICA NATIONAL

Represented By
Adam N Barasch

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Sergio Lopez Miranda

Represented By
David A Akintimoye

Esmeralda Miranda

Represented By
David A Akintimoye

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2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#7.00 HearingRE: [19] Motion to Dismiss Adversary Proceeding

Docket 19

Tentative Ruling:

7/9/2019

The Court will treat the instant Motion to Dismiss as a motion for summary judgment. Hearing is continued to August 21, 2019 at 10:00 a.m. July 19, 2019 is the deadline for the Plaintiffs to file and serve any additional briefs, including a statement of uncontroverted facts and conclusions of law and a statement of genuine issues. Shellpoint shall have to and including July 29, 2019 to file any additional briefs, including a statement of uncontroverted facts and conclusions of law and a statement of genuine issues.

The Court notes that Exhibit 4 to the Declaration of Erin McCarthy does not appear to be the correct Assignment of Deed of Trust and should be corrected.

The parties should focus their briefs on the following issue: The crux of the Plaintiffs' breach of contract claim is that Nationstar was bound by the Plan and, therefore, as the servicer of Nationstar's successor-in-interest, Shellpoint is also bound. However, it is unclear whether there is evidence establishing that Nationstar was identified in the Plan or that Nationstar ever received appropriate notice.

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

Shellpoint Mortgage Servicing, LLC

Represented By
Erin M McCartney

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CONT... **Sergio Miranda**
BANK OF AMERICA NATIONAL

Represented By
Adam N Barasch

Chapter 11

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Sergio Lopez Miranda

Represented By
David A Akintimoye

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare and Medi-Cal Provider Agreements.

fr, 6-5-19

Docket 0

***** VACATED *** REASON: CONTINUED 7-24-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] Cure Objection Asserted by **Ortho Engineering, Inc.**

fr. 4-17-19

Docket 2108

Tentative Ruling:

7/9/2019

No appearances required. It appears that this counterparty was inadvertently omitted from the *Omnibus Stipulation Continuing Hearing on Objections Re Cure and Other Issues* [Doc. No. 2669]. The hearing on the cure objection asserted by Ortho Engineering, Inc. is CONTINUED to August 7, 2019, at 10:00 a.m., to take place concurrently with the hearings on cure objections asserted by other counterparties. Within seven days, the Debtors shall submit an order setting the continued hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Alcon Vision, LLC

Represented By
Kevin H Morse

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19; 6-5-19

Docket 2157

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19

Docket 2144

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

Susan I Montgomery

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

**#12.00 Hearing re [1572] and [1858] and [2145] Cure Objection Asserted by
UnitedHealthcare Insurance Company**

fr. 4-17-19; 6-5-19

Docket 1858

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

UnitedHealthcare Insurance

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1869] Cure Objection Asserted by Experian Health fka Passport Health Communications Inc

fr. 4-17-19; 6-5-19

Docket 1869

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Experian Health fka Passport Health

Represented By

Joseph D Frank

Alan I Nahmias

United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19; 6-5-19

Docket 1881

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19

Docket 1882

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1933] Cure Objection Asserted by **Angeles IPA A Medical Corporation**

fr. 4-17-19; 6-5-19

Docket 1933

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Angeles IPA A Medical Corporation

Represented By

Mark A Neubauer

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19

Docket 1930

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

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2:18-20151 Verity Health System of California, Inc.

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#18.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19

Docket 1873

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

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2:18-20151 Verity Health System of California, Inc.

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#19.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19

Docket 1949

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

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#20.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19

Docket 1965

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19; 6-5-19

Docket 2058

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19

Docket 1954

*** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19

Docket 1850

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19

Docket 1940

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 Hearing
RE: [1932] Motion to Assume Lease or Executory Contract (or REJECT)
(Goldberg, Marshall)

FR. 4-24-19; 6-5-19

Docket 1932

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

4/23/2019

Tentative Ruling:

Hearing continued per stipulation. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#26.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19

Docket 1849

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By
Paul J Laurin
David M Powlen
Kevin Collins

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#27.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**
fr. 4-17-19; 6-5-19

Docket 1863

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#28.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19

Docket 1866

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#29.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19

Docket 1857

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#30.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19

Docket 1890

***** VACATED *** REASON: CONTINUED 8-7-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#31.00 Hearing
RE: [2563] Motion to Compel Compliance with Order Approving Procedures
Related to the Assumption of Certain Executory Contracts and Unexpired
Leases [Dkt. No. 1572]

Docket 2563

Tentative Ruling:

7/9/2019

For the reasons set forth below, the Motion is GRANTED, except that the deadline for the Debtors to provide an irrevocable designation as to the assumption or rejection of Movants' agreements shall be **July 17, 2019, at 5:00 p.m.** (instead of one day after entry of an order approving the Motion).

Pleadings Filed and Reviewed:

- 1) Notice of Motion to Compel Compliance with Order Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases [Doc. No. 2563] (the "Motion")
 - a) Declaration of Eric Goldstein in Support of Motion to Compel Compliance with Order Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases [Doc. No. 2564]
 - b) Notice of Hearing on Motion [Doc. No. 2565]
 - c) Joinder of Cigna Entities to Motion [Doc. No. 2577]
- 2) Response of Strategic Global Management, Inc. to "Motion to Compel Compliance with Order Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases" [Doc. No. 2564]
- 3) Debtors' Response to Motion to Compel Compliance with Order Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases [Doc. No. 2626]
- 4) Reply in Support of Motion to Compel Compliance with Order Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases [Doc. No. 2656] (the "Reply")

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

I. Facts and Summary of Pleadings

A. Background

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

UnitedHealthcare Insurance Company ("UnitedHealthcare") and Cigna Healthcare of California, Inc. and various entities affiliated with Cigna (the "Cigna Entities," and together with UnitedHealthcare, the "Movants") are both parties to various agreements with the Debtors. Under the agreements, members of health insurance plans administered by Movants receive benefits at the Debtors' hospitals.

On February 19, 2019, the Court entered an *Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Doc. No. 1572] (the "Bidding Procedures Order"). The Bidding Procedures Order established procedures governing the assumption and assignment of executory contracts and unexpired leases. Pursuant to those procedures, the Debtors filed various notices designating the executory contracts and unexpired leases which the Debtors intend to assume and assign (the "Designated Contracts," and the list of Designated Contracts, the "Designation Schedule"). On May 2, 2019, the Court entered an order approving the sale of certain hospitals operated by the Debtors to Strategic Global Management ("SGM"). *See* Doc. No. 2306 (the "Sale Order"). Pursuant to the Sale Order, SGM may add agreements to the Designation Schedule up until thirty days prior to the closing of the sale, and may remove agreements from the Designation Schedule up until seven days prior to closing.

The contracts between the Debtors and Movants are not subject to the Sale Order's provisions regarding SGM's time to add and remove agreements from the Designation Schedule. The Bidding Procedures Order provides in relevant part:

The Debtors shall, no later than the earlier of (i) 48 hours after the conclusion

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Los Angeles
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Verity Health System of California, Inc.

Chapter 11

of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume and assign any or all of the Cigna Provider Agreements as part of the Sale; provided, however, that such notice shall be irrevocable only to the extent that the Successful Bidder's transaction is approved by this Court and an order thereon becomes final and non-appealable. The Debtors shall provide the same notice to UnitedHealthcare Insurance Company.

Bidding Procedures Order at ¶ 7.

This language was included in the Bidding Procedures Order to resolve Movants' objections to the assumption/rejection timeline. Movants had argued that the timeline did not provide them sufficient time to notify health plan beneficiaries of changes in coverage, as required by law. The tentative ruling on the Bidding Procedures Motion explained the reason for the inclusion of the language as follows:

UnitedHealthcare requests that the Debtors provide notice of the contracts to be assumed and assigned at least 70 days before the Closing Date.

The Court finds that the timetable proposed by the Debtors provides UnitedHealthcare sufficient notice of whether its executory contracts will be assumed and assigned. The Debtors will provide notice of the contracts to be assumed on April 11, 2019, two days after the Full Bid Auction concludes on April 9, 2019. In the Court's experience, the Attorney General's review of the transaction will require several months. Therefore, UnitedHealthcare will receive in excess of the 70 days' notice that it requests.

Tentative Ruling on Bidding Procedures Motion [Doc. No. 2564, Ex. A] at 40.

B. Summary of Papers Filed in Connection with the Motion

The Debtors have declined to provide Movants with an irrevocable decision as to whether their agreements will be assumed or rejected. Movants seek an order compelling the Debtors to comply with ¶ 7 of the Bidding Procedures Order. Movants assert that pursuant to ¶ 7, the Debtors were required to provide an irrevocable decision by no later than April 11, 2019 (that is, 48 hours after the conclusion of the Auction). Movants seek an order compelling the Debtors to provide an irrevocable decision within one business day of entry of an order on the Motion.

The Debtors and SGM oppose the Motion. The Debtors assert that because the

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Chapter 11

Auction did not take place, the language requiring them to provide notice by the earlier of "48 hours after conclusion of the Auction" was never triggered. Debtors' position is that the deadline to provide an irrevocable decision is thirty days prior to the closing of the sale. Debtors maintain that they are in compliance with the Bidding Procedures Order, and contend that the Motion amounts to an impermissible collateral attack upon the order. SGM argues that it should be provided an additional time to determine whether the agreements should be assumed and assigned given the complexity of the transaction.

In Reply, Movants contend that the Debtors' interpretation of the Bidding Procedures Order is absurd:

The Debtors' position that it did not have to provide irrevocable notice on April 11, 2019, because the auction scheduled for August 9, 2019, was unnecessary due to the lack of a qualified bidder is simply absurd. If a qualified bidder submitted a full bid by the April 3, 2019 bid deadline and prevailed in the full bid auction on April 9, 2019, the Debtors concede that they would have had to make the irrevocable designation by April 11, 2019. However, since no bidder submitted a qualified bid and the auction was not necessary, the Debtors claim that this Court did not require them to make the irrevocable designation by April 11, 2019, and the Purchaser would have three months, if not more, to make this designation.

This makes no sense. Why would the Court provide months of additional time for the Purchaser to make an irrevocable designation decision when it had been involved in this transaction since at least January 2019, but make a new bidder make this decision by the April 11 designation deadline? The answer is clearly that it did not. The Court required all parties to make the designation by April 11, 2019, or possibly earlier if the sale was going to close in less than thirty days from that date.... [T]he "48 hours" after the conclusion of the auction language was used in lieu of a fixed date to allow for the possibility that the Auction, if held, may not have concluded on April 9, 2019. The "thirty (30) days" language was included so as to accelerate the required notice if the Sale Closing was to occur shortly after the Sale Hearing.

Reply at ¶¶ 5–6.

Movants further assert that the Debtors' interpretation of the Bidding Procedures

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CONT... Verity Health System of California, Inc.

Chapter 11

Order is inconsistent with representations made by the Debtors during the adjudication of the Bidding Procedures Motion:

The Debtors conveniently ignore that, in their reply to United's Bid Procedures Objection, they agreed to provide notice to all parties of whether their executory contracts will be assumed and assigned to the "Successful Bidder(s) on the day after the Full Bid Auction concludes" and argued that "given the fourth month time period for the AG review of the transaction, this timeline should be more than sufficient to satisfy the timing concerns raised" by United and Cigna. (Docket No. 1448, p. 6.) Thus, the Debtors explained that the four-month AG review would provide United ample time to provide notice to its members if the Purchaser does not have the contracts assumed and assigned to it.

Reply at ¶ 7.

II. Findings and Conclusions

The Court rejects the Debtors' interpretation of the Bidding Procedures Order. The Debtors now assert that language in the Bidding Procedures Order keying deadlines to the "conclusion of the Auction" is ineffectual because the Auction never took place. The Debtors' interpretation is inconsistent with representations made by the Debtors during the adjudication of the Bidding Procedures Motion. Specifically, the Debtors stated:

As indicated above, the Debtors will provide all parties with notification of whether their contract is to be assumed and assigned to the Successful Bidder(s) on the day after the Full Bid Auction concludes. The Debtors, however, cannot give assurance that such notice will be irrevocable as the Debtors cannot predict whether the Successful Bidder's transaction will be approved by this Court or whether it will survive any potential litigation with the AG. Nonetheless, given the four month time period for the AG review of the transaction, this timeline should be more than sufficient to satisfy the timing concerns raised in both the Cigna and United Objections.

Doc. No. 1448 at 6.

Based upon the Debtors' representation, the Court made the following finding in

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CONT... **Verity Health System of California, Inc.**
the Tentative Ruling on the Bidding Procedures Motion:

Chapter 11

The Court finds that the timetable proposed by the Debtors provides UnitedHealthcare sufficient notice of whether its executory contracts will be assumed and assigned. The Debtors will provide notice of the contracts to be assumed on April 11, 2019, two days after the Full Bid Auction concludes on April 9, 2019. In the Court's experience, the Attorney General's review of the transaction will require several months. Therefore, UnitedHealthcare will receive in excess of the 70 days' notice that it requests.

Tentative Ruling on Bidding Procedures Motion [Doc. No. 2564, Ex. A] at 40.

The Debtors persuaded the Court that it was acceptable for Movants to receive notice of whether their agreements would be assumed and assigned on April 11, 2019—two days after the Auction was scheduled to occur. The Debtors are now judicially estopped from taking a contrary position. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 1982) ("Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position").

In addition, the Debtors' interpretation of the Bidding Procedures Order is unduly strained. The Bidding Procedures Order keys various deadlines to the "conclusion of the Auction." Even though the Auction did not take place, the Debtors have still observed these deadlines. For example, the Debtors provided contract counterparties notice of whether their contract had been designated for assumption within 48 hours after the time the Auction had been scheduled to take place.

Based upon the foregoing, the Motion is GRANTED, except that the deadline for the Debtors to provide an irrevocable designation as to the assumption or rejection of Movants' agreements shall be **July 17, 2019, at 5:00 p.m.** (instead of one day after entry of an order approving the Motion).

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Verity Health System of California, Inc.

Chapter 11

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#32.00 HearingRE: [2567] Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and Declarations (Orantes, Giovanni)

Docket 2567

Tentative Ruling:

7/9/2019

See Cal. No. 33, below, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Chapter 11

#33.00 HearingRE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

Docket 2579

Tentative Ruling:

7/9/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Amended Motion for Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc. [Doc. No. 2579] (the "Motion")
- 2) Debtors' Opposition to Amended Motion for Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc. [Doc. No. 2632] (the "Opposition")
 - a) Notice of Errata [Doc. No. 2641]
- 3) Response of Strategic Global Management, Inc. to "Motion for Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc." [Doc. No. 2625]
- 4) Movant's Reply to Debtors' Opposition to Amended Motion for Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc. [Doc. No. 2667] (the "Reply")
- 5) Movant's Reply to Strategic Global Management, Inc.'s Opposition to Amended Motion for Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc. [Doc. No. 2668]

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CONT... Verity Health System of California, Inc.

Chapter 11

I. Facts and Summary of Pleadings

A. Background

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Seoul Medical Group, Inc. (the "Group") moves for an order shortening the time by which Debtor St. Vincent Medical Center ("St. Vincent") must assume or reject the *Healthcare Services Risk Sharing Agreement* (the "Agreement") with the Group.

On May 1, 2017, St. Vincent entered into the Agreement with the Group. The Group is an integrated practice association ("IPA") of doctors who in the past have referred patients to St. Vincent for treatment.

On February 19, 2019, the Court entered an *Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Doc. No. 1572] (the "Bidding Procedures Order"). The Bidding Procedures Order established procedures governing the assumption and assignment of executory contracts and unexpired leases. Pursuant to those procedures, the Debtors filed various notices designating the executory contracts and unexpired leases which the Debtors intend to assume and assign (the "Designated Contracts," and the list of Designated Contracts, the "Designation Schedule"). On May 2, 2019, the Court entered an order approving the sale of St. Vincent and other hospitals operated by the Debtors to Strategic Global Management ("SGM"). *See* Doc. No. 2306 (the "Sale Order").

On April 11, 2019, the Debtors removed the Agreement from the Designation Schedule. *See* Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment [Doc. No. 2131] at 18. However, pursuant to the Sale Order, Strategic may add agreements to the Designation Schedule up until thirty days prior to the closing of the sale, and may remove agreements from the Designation Schedule up until seven days prior to closing.

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CONT... Verity Health System of California, Inc.

Chapter 11

B. Summary of Papers Filed in Connection with the Motion

The Group seeks entry of an order compelling the Debtors to file a motion to assume or reject the Agreement within sixty days of the date of entry of an order granting the instant Motion. The Group contends that such an order is necessary for the following reasons:

- 1) The Group needs certainty regarding its operations, including whether St. Vincent will remain as a treatment option for patients.
- 2) The Group has legitimate concerns that St. Vincent and VHS have misappropriated the risk pool funds that the Group is entitled to receive under the Agreement.
- 3) The Debtors have defaulted under the Agreement. If the Debtors wish to assume the Agreement, they must pay the Group approximately \$4 million to cure the default.

Debtors oppose the Motion for the following reasons:

- 1) There is no merit to the Group's argument that it needs certainty regarding whether St. Vincent will remain as a treatment option for the Group's patients. Under the Agreement, the Group provided services to patients of the Central Health Plan. In August 2018, the Central Health Plan terminated its relationship with St. Vincent. St. Vincent ceased providing in-network care to the Group's patients since termination of its relationship with the Central Health Plan.
- 2) The allegation that the Debtors have mishandled risk pool funds is not supported by any evidence and should be disregarded.
- 3) The Group's claim that the Debtors owe \$4 million on account of an alleged default shows that the Agreement is non-executory. The Group was discharged from any of its obligations under the Agreement when Central Health Plan terminated its relationship with St. Vincent. The only obligation remaining under the agreement is the payment of money, which means that the Agreement is not executory.

SGM opposes the Motion. SGM asserts that it needs additional time to make an irrevocable decision as to whether to add the Agreement to the Designation Schedule.

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CONT... Verity Health System of California, Inc.

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In Reply, the Group argues that the Debtors conflate the Central Health Plan's termination of its relationship with St. Vincent with the end of the patient care relationship between the Group and St. Vincent. According to the Group, after St. Vincent terminated its relationship with the Central Health Plan, the Group continued to refer patients to St. Vincent pursuant to the terms of the contract that was in place before the Agreement took effect.

II. Findings and Conclusions

At the outset, the Court declines the Group's request that the Debtors' Opposition be disregarded. The Group correctly notes that the Opposition was filed one day late. However, the late filing resulted only from the fact that the Debtors inadvertently filed an incorrect document in response to the Motion and did not realize the error until the next day. *See* Notice of Errata Re Debtors' Opposition [Doc. No. 2641] (stating that the Debtors "inadvertently filed an incorrect document" on June 26, and filed the corrected document on June 27). The brief delay occasioned by this inadvertence did not prejudice the Group's ability to file a Reply to the Opposition.

Pursuant to § 365(d)(2), the Debtors may assume or reject an executory contract at any time prior to plan confirmation. However, the Court may order the Debtors, for cause, to "determine within a specified period of time whether to assume or reject" an executory contract. § 365(d)(2). "In deciding whether to accelerate the debtor's decision, the court must balance the interests of the contracting party against the interests of the debtor and its estate." *In re Physician Health Corp.*, 262 B.R. 290, 292 (Bankr. D. Del. 2001). "Where a party seeks to shorten the Debtor's statutory period to assume or reject, the burden is on the movant to demonstrate cause." *In re Dana Corp.*, 350 B.R. 144, 147 (Bankr. S.D.N.Y. 2006).

The Group has not carried its burden of demonstrating cause to shorten the period under which the Debtors must assume or reject the Agreement. Shortening the deadline would deprive SGM of the benefits of certain of the procedures it negotiated for when agreeing to purchase a substantial portion of the estate's assets. Ensuring that the sale closes in an orderly manner is of vital importance to the estate and creditors. Affording SGM the benefit of the protections it negotiated is of particular importance given that no other bidder emerged to purchase the estate's assets.

There is no merit to the Group's contention that shortening the deadline is necessary to provide the Group's patients certainty regarding whether they will receive treatment at St. Vincent. The Group's patients have not received treatment at St. Vincent, under the auspices of the Agreement, since August 2018. Chou Decl.

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[Doc. No. 2632] at ¶ 7. The Group attempts to muddy the waters by asserting that its patients continue to receive treatment at St. Vincent. It is true that St. Vincent continues to provide care to the Group's patients under fee-for-service payor arrangements that are not subject to the terms of the Agreement. That St. Vincent continues to provide care pursuant to a different agreement is not relevant to the relief that the Group seeks. [Note 1]

The Court declines to consider the Group's allegation that the Debtors have improperly handled risk pool funds. The allegation is supported by no evidence. Further, whether the Group may (or may not) have a claim against the Debtors on account of the risk pool funds is not relevant to deciding whether the deadline to assume or reject the Agreement should be shortened.

Based upon the foregoing, the Motion is DENIED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Group attempts to elide the distinction between the Agreement and a prior *Physicians Capitated Agreement* that was in effect between June 1, 2014 and May 1, 2017 (the "2014 Agreement"). The declaration of Min Young Cha in support of the Motion states that the Group's "physicians continue to refer and direct our patient members for inpatient hospital treatment at St. Vincent whenever it is medically appropriate." Cha Decl. at ¶ 10. The declaration further states that in its dealings with St. Vincent, the Group "continue[s] to operate under the [Agreement]." *Id.* However, in its Reply, the Group admits that subsequent to the termination of the relationship between the Central Health Plan and St. Vincent in August 2018, its patients no longer received treatment at St. Vincent pursuant to the Agreement. *See* Reply at 3–4 ("In truth, after August 2018, the Movant understands that the Plan simply resumed

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paying for covered services for any of its enrollees, including direct payment for hospitalization services claims, as it had done from June 1, 2014 until May 1, 2017 [pursuant to the 2014 Agreement] before the Hospital Full Risk amendment [the Agreement] went into effect.").

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#34.00 HearingRE: [64] Motion For Sale of Property of the Estate under Section 363(b) - No Fee with proof of service (Attachments: # 1 Exhibit 1 # 2 Exhibits 2-4 and POS) (Avery, Wesley)

Docket 64

Tentative Ruling:

7/9/2019

Hearing required. The Court will conduct an auction in accordance with the procedures set forth below.

Pleadings Filed and Reviewed

1. Trustee's Notice of Motion and Motion to Sell Real Property and For Turnover [Doc. No. 64] (the "Sale Motion")
2. Notice of Sale of Estate Property [Doc. No. 65]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Felix Anibal Diaz and Cecilia Giron Diaz (together, the "Debtors") filed a voluntary chapter 7 petition on July 6, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell real property located at 11119 S. Doty Avenue, Inglewood, CA 90303 (the "Property"). The Trustee also seeks an order compelling the Debtors to turnover over the Property, free and clear of all possessions and occupants, within 7 days of entry of an order approving the sale.

Key Sale Terms:

1. Proposed purchaser: Andrew C. Corro, Julio Herrera and Elsa Aguilar (collectively, "Coro")
2. Property for Sale: 11119 S. Doty Avenue, Inglewood, CA 90303
3. Purchase Price: \$680,000
4. Overbids: The initial overbid shall be \$685,000. Subsequent overbids shall be in increments of \$5,000.

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

The Trustee seeks authorization to sell the Property pursuant to § 363(b) on an "as is, where is" basis without any warranties or contingencies. The Trustee states that the Property is encumbered by a first deed of trust securing \$313,408.11 in debt. The Trustee also states that there is a second deed of trust recorded against the Property securing \$324,000 in debt, but that pursuant to a judgment entered in the Trustee's favor on February 15, 2019, in *Menchaca v. Olivares*, 2:18-ap-01273-ER, the deed of trust was assigned to the estate. Therefore, the Trustee anticipates that, after paying off the first deed of trust and all costs of sale, the sale will result in approximately \$324,000 in net proceeds for the estate.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

The Proposed Sale is Approved

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19-20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

The Trustee is authorized to pay real estate brokers' commissions directly from escrow. Having reviewed the Declarations of the Trustee and Jan Neiman, the real estate broker who marketed the Property, the Court finds that the proposed buyers are good faith purchasers entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction the Court will take testimony from such overbidder to determine whether § 363(m) protections are warranted.

The Court finds it appropriate to waive the 14-day stay pursuant to Fed. R. Bankr. P. 6004(h).

Auction Procedures

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CONT... **Felix Anibal Diaz and Cecilia Giron Diaz**

Chapter 7

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchasers and all qualified bidders. The initial overbid will be \$685,000, with subsequent overbids to be in increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Turnover

Section 542(a) provides that an entity in possession of estate property "shall" deliver such property to the trustee. *Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996). This a mandatory duty arising upon the filing of the bankruptcy petition. *Id.* The term "entity" as defined in § 101(15) is "broad enough to encompass an individual chapter 7 debtor." *Bencomo v. Avery (In re Bencomo)*, 2016 Bankr. LEXIS 2901, at * 13 (B.A.P. 9th Cir. Aug. 8, 2016).

The Trustee shall be entitled to an order directing turnover over the Property as is necessary to facilitate the Trustee's administration of the estate and to ensure timely closing of the sale.

III. Conclusion

For the reasons set forth above, the Sale Motion is GRANTED. The Court will conduct an auction in accordance with the procedures set forth above.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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10:00 AM

2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#35.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01079. Complaint by Sergio Lopez Miranda against BANK OF AMERICA NATIONAL ASSOCIATION. (Charge To Estate). (Attachments: # 1 Supplement Summons) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Akintimoye, David)

fr. 6-11-19

Docket 1

Tentative Ruling:

7/9/2019

In view of this Court's tentative rulings set forth in Calendar Nos. 6 -7, incorporated in full by reference, all litigation dates and deadlines previously ordered by the Court are VACATED. A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted no later than fourteen days prior to the hearing. If this action is resolved on the papers prior to September 10, 2019, the continued Status Conference will be taken off calendar.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sergio Miranda

Represented By

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CONT... Sergio Miranda

David A Akintimoye

Chapter 11

Defendant(s):

BANK OF AMERICA NATIONAL	Pro Se
Shellpoint Mortgage Servicing LLC	Pro Se
DOES 1-10, Inclusive	Pro Se

Joint Debtor(s):

Esmeralda Miranda	Represented By David A Akintimoye
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Plaintiff(s):

Sergio Lopez Miranda	Represented By David A Akintimoye
Esmeralda Miranda	Represented By David A Akintimoye

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Hearing Room 1568

11:00 AM

2:14-10364 Blake Adams Bailey and Gretchen Frances Palmer

Chapter 11

#100.00 HearingRE: [109] Motion For Final Decree and Order Closing Case. (and Administratively Reopening-with proof of service)

Docket 109

Tentative Ruling:

7/9/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion for [Order] (1) Administratively Reopening Chapter 11 Case and (2) Entry of Discharge of Chapter 11 Case Pursuant to 11 U.S.C. § 1141(d)(5) Upon Completion of Payments to Creditors and Final Decree Closing Chapter 11 Case [Doc. No. 109] (the "Motion")
 - a) Notice of Motion [Doc. No. 110]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Blake Adams Bailey and Gretchen Frances Palmer (together, the "Debtors") filed a voluntary Chapter 11 petition on January 8, 2014. On September 25, 2014, the Court entered an order confirming the Debtors' Chapter 11 Plan (the "Plan"). *See* Doc. No. 86 (the "Confirmation Order"). The Plan provided for the Debtors to make monthly payments to general unsecured creditors for a period of five years. On January 29, 2015, the Court entered an order administratively closing the case so that the Debtors would not have to continue paying fees to the United States Trustee during the five-year payment period. Doc. No. 106.

Debtors seek an order administratively reopening the case, entry of a discharge, and entry of a final decree. Debtors assert that they have made all payments required under the Plan and attach bank statements to that effect. No opposition to the Motion is on file.

II. Findings and Conclusions

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CONT... **Blake Adams Bailey and Gretchen Frances Palmer**

Chapter 11

The Motion is GRANTED in its entirety. Pursuant to the confirmed Plan, the Debtor is entitled to a discharge upon the completion of all payments contemplated by the Plan. The evidence submitted in connection with the Motion establishes that the Debtors have made all payments required under the Plan. Accordingly, the Debtors are entitled to entry of a discharge as provided by the Plan.

Entry of a final decree is appropriate. Pursuant to § 350(a) and Bankruptcy Rule 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

Here, the estate has been fully administered because the Debtors have made all payments required under the Plan.

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, the Debtors shall submit a conforming order, incorporating this tentative ruling by reference. Upon entry of the order granting the Motion, the Clerk of the Court is directed to enter an Order of Discharge.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Blake Adams Bailey and Gretchen Frances Palmer Chapter 11
appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blake Adams Bailey

Represented By
Marcus G Tiggs

Joint Debtor(s):

Gretchen Frances Palmer

Represented By
Marcus G Tiggs

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Hearing Room 1568

11:00 AM

2:12-50423 Deborah Earle

Chapter 7

#101.00 HearingRE: [464] Motion to Reconvert Case from Chapter 7 to Chapter 11 (Egbase, Anthony)

Docket 464

Tentative Ruling:

7/9/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion to Reconvert Case from Chapter 7 to Chapter 11 [Doc. No. 464] (the "Motion")
 - a) Notice of Hearing on Motion [Doc. No. 467]

I. Facts and Summary of Pleadings

Deborah Earle (the "Debtor") filed a voluntary Chapter 11 petition on December 9, 2012. On April 25, 2016, the Court confirmed the Debtor's Chapter 11 Plan of Reorganization (the "Plan"). Doc. No. 387. On July 19, 2018, the Court entered an order requiring the Debtor to remain in compliance with the reporting requirements imposed by the Office of the United States Trustee (the "UST"). Doc. No. 436 (the "Compliance Order"). Under the Compliance Order, the Debtor was entitled to receive a one-time written notice of delinquency from the UST, and the opportunity to cure the delinquency within seven days. The Compliance Order provided that in the event of any subsequent delinquencies, the UST was entitled to immediate conversion or dismissal of the case upon application.

On March 27, 2019, the Court converted the case to Chapter 7 after the Debtor failed, for the second time, to remain in timely compliance with UST reporting requirements.

The Debtor now moves to reconvert the case to Chapter 11. In the event the case is converted to Chapter 11, the Debtor intends to file a motion to sell property located at 4702 W. 165th Street, Lawndale, CA (the "Property"). On April 9, 2019, the Debtor—without the involvement of the Chapter 7 Trustee—entered into an agreement to sell the Property to Oliver Smith and Margaret Smith.

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CONT... Deborah Earle

Chapter 7

The Chapter 7 Trustee does not oppose the Motion.

II. Findings and Conclusions

Section 706(b) provides: "On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time."

In view of the absence of opposition from the Chapter 7 Trustee, the Court will reconvert the case to Chapter 11. The previously entered Compliance Order shall remain in effect. This means that in the event the Debtor fails to comply with any UST reporting requirements, the case will immediately be reconverted to Chapter 7 upon application of the UST, without further notice or hearing. The Debtor has already received the one-time notice of delinquency to which she is entitled under the Compliance Order. Therefore, the UST is not required to notify the Debtor of any reporting deficiencies prior to submitting an application seeking reconversion of the case.

Regarding her obligation to comply with UST reporting requirements, the Debtor is advised that Local Bankruptcy Rule ("LBR") 2015-2(a)(1) provides: "The ... debtor in possession ... must timely provide the United States Trustee with financial, management and operational reports, and such other information requested by the United States Trustee pursuant to the *Guidelines and Requirements for Chapter 11 Debtors in Possession* as necessary to properly supervise the administration of a Chapter 11 case." Debtors are under a continuing obligation to comply with all requirements imposed by the UST. Failure to timely comply is grounds for dismissal or conversion. If debtors do not timely submit the required information, the UST cannot effectively carry out its oversight responsibilities under 28 U.S.C. §586. There is nothing in the statute that says that debtors may ignore their compliance obligations until receiving a warning from the UST. The UST's office does not have the resources to babysit every single Chapter 11 debtor with respect to reporting and compliance obligations. By commencing a Chapter 11 petition, the Debtor voluntarily accepted the responsibility of complying with all applicable laws and regulations, including reporting obligations imposed by the UST's office.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz

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CONT... Deborah Earle

Chapter 7

at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle Jane Lindsey
Edie Walters
W. Sloan Youkstetter

Trustee(s):

Peter J Mastan (TR)

Pro Se

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Monday, July 15, 2019

Hearing Room 1568

10:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#1.00 Hearing
RE: [48] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: pending lawsuit . (Slates, Ronald)

fr. 6-24-19

Docket 48

Tentative Ruling:

7/11/2019

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 48] (the "R/S Motion")
2. Response to Motion Regarding the Automatic Stay and Declaration(s) in Support [Doc. No. 50] (the "Opposition")
3. Notice of Continued Hearing on Creditor/Movant's Motion for Relief From Stay and Service on Debtor and All Interested Parties [Doc. No. 52]
4. As of the preparation of this tentative ruling, no further opposition is on file

I. Facts and Summary of Pleadings

Neilla M. Cenci (the "Debtor"), filed this voluntary chapter 7 case on December 6, 2018 (the "Petition Date"). On June 3, 2019, Ball CM, Inc. ("Movant") filed this request for relief from the automatic stay pursuant to § 362(d)(1) to proceed with an action bearing the caption *Ball CM, Inc. v. Cenci*, Case No. 18STCV04108 (the "State Court Action") pending in Los Angeles Superior Court (the "State Court"). Movant commenced the State Court Action on November 7, 2018 by filing a complaint against the Debtor asserting claims for breach of employment duties, breach of fiduciary duty, constructive fraud, fraud & deceit, and for an accounting (the "Complaint").

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CONT... Neilla M Cenci

Chapter 7

Movant makes the following arguments in support of relief from stay:

- Mandatory abstention applies under 28 U.S.C. § 1334(c)(2);
- The claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum;
- The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum;
- Movant seeks relief from stay to litigate the State Court Action and use any resulting judgment as issue and/or claim preclusion in a pending adversary proceeding Movant initiated against the Debtor in this bankruptcy case;
- Movant intends to move to amend the Complaint to add other non-debtor parties to the State Court Action, so it would be in the interests of judicial economy to proceed against all parties in one forum;
- The State Court Action can be tried more expeditiously in the State Court, is in the advanced stages of discovery, and trial will likely be set for November 2019.

On June 17, 2019, Debtor's Counsel filed an opposition to the R/S Motion arguing that the R/S Motion should not be granted because Movant did not serve the Debtor as required by Local Bankruptcy Rule ("LBR") 9013-1(d)(1). The Court agreed, directed Movant to serve the Debtor, and continued the hearing to this date and time. On June 24, 2019, Movant filed an amended proof of service reflecting service on the Debtor [Doc. No. 52].

As of the preparation of this tentative ruling, the Debtor has not filed a substantive opposition.

II. Findings of Fact and Conclusions of Law

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause . . ." 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co.* (*In re Kronemyer*), 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson*

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CONT...

Neilla M Cenci

Chapter 7

Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt[.]"

**United States Bankruptcy Court
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10:00 AM

CONT... Neilla M Cenci

Chapter 7

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

The Court finds that Movant has established a prima facie case that "cause" exists to grant relief from stay under § 362(d)(1). First, granting stay relief will promote interests of judicial economy and avoid piecemeal litigation because Movant intends to seek leave to amend the Complaint to add non-debtor defendants. The Court also finds that stay relief is appropriate because Movant's claims arise under state law and the State Court is more intimately familiar with the parties' dispute and applicable California law to more expeditiously move the litigation to final judgment.

Additionally, as of the preparation of this tentative ruling, no substantive opposition has been filed and Movant has cured the service deficiency raised by Debtor's Counsel. Therefore, pursuant to LBR 9013-1(h), the Debtor and all other interested parties are deemed to consent to the granting of the R/S Motion.

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and Movant's rights are preserved with respect to its adversary complaint filed under §§ 523 and 727 (*In re Ball CM, Inc., v. Cenci*, 2:19-ap-0165-ER). This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

Movant's request for waiver of the 14-day stay is denied for lack of good cause shown. All other relief requested but not specifically granted above is denied.

III. Conclusion

For the reasons set forth above, the R/S Motion is GRANTED.

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CONT... Neilla M Cenci

Chapter 7

Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

6/20/2019

Tentative Ruling:

For the reasons set forth herein, CONTINUE HEARING to **July 15, 2019 at 10:00 a.m.** The proof of service [Doc. No. 48] does not reflect that the Motion was served on the Debtor, individually, as required by Local Bankruptcy Rule 4001-1(c) (1)(C)(i) and, more generally, 9013-1(d)(1). Movant is directed to serve the Motion on the Debtor and give notice of the continued hearing date by no later than June 28, 2019 and file a proof of service evidencing compliance with this order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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10:00 AM

CONT... Neilla M Cenci

Chapter 7

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:19-13952 Seung Kyu Jang

Chapter 7

#2.00 HearingRE: [23] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16 Arborside, Irvine, CA 92603 .
(Raftery, Kelly)

Docket 23

Tentative Ruling:

7/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See e.g. Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (9th Cir. BAP 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (9th Cir. BAP 1981).

The subject property has a value of \$945,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$1,308,560.52. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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CONT... **Seung Kyu Jang**

Chapter 7

Further, the Court finds that there are facts presented in the Motion sufficient for the court to find bad faith pursuant to § 362(d)(4). Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved the filing of multiple bankruptcy cases affecting the property. *See* Declaration of C. Lacey Blanton, paragraph 18(b).

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Seung Kyu Jang

Represented By
Ji Yoon Kim

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CONT... Seung Kyu Jang

Chapter 7

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:19-14029 Oran Kemp, Jr.

Chapter 7

#3.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1209 N KEMP AVE, COMPTON, CA 90222 .

Docket 13

Tentative Ruling:

7/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the debtor stated an intention to surrender the property to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Oran Kemp, Jr.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Oran Kemp Jr.

Represented By
Sean S Vahdat

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:19-14407 Paul David Young

Chapter 7

#4.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Vehicle: 2010 Dodge Grand Caravan .

Docket 10

Tentative Ruling:

7/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Paul David Young

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul David Young

Represented By
Jacqueline D Serrao

Trustee(s):

Timothy Yoo (TR)

Pro Se

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10:00 AM

2:19-17018 Wonkyu Park and Hojung Park

Chapter 7

#5.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2222 Foothill Boulevard, La Canada, CA 91011 .

Docket 9

Tentative Ruling:

7/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on April 9, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Wonkyu Park and Hojung Park

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Wonkyu Park	Pro Se
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Joint Debtor(s):

Hojung Park	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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Monday, July 15, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [2557] Motion for Relief from Stay .

Docket 2557

***** VACATED *** REASON: CONTINUED 7-29-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [2558] Motion for Relief from Stay .

Docket 2558

***** VACATED *** REASON: CONTINUED 7-29-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01388 Elissa D. Miller, solely in her capacity as chapte v. LC Engineering Group,

#1.00 Status Hearing to Monitor Consummation of Settlement RE: [1] Adversary case 2:18-ap-01388. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against LC Engineering Group, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

LC Engineering Group, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
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CONT... QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01389 Elissa D. Miller, solely in her capacity as chapte v. Creative Sound & Vision,

#2.00 Status Hearing to Monitor Consummation of Settlement
RE: [1] Adversary case 2:18-ap-01389. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Creative Sound & Vision, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-13-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Creative Sound & Vision, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
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10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01415 Elissa D. Miller, solely in her capacity as chapte v. Certified Tile, Inc., a

#3.00 Status Hearing

RE: monitor consummation of the settlement [1] Adversary case 2:18-ap-01415. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Certified Tile, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Certified Tile, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
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CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01019 Timothy J. Yoo, Chapter 7 Trustee v. IDrive Interactive, LLC

- #4.00** Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:19-ap-01019. Complaint by Timothy J. Yoo, Chapter 7 Trustee against IDrive Interactive, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 4-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-15-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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10:00 AM

CONT... Blue Global, LLC

Chapter 7

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IDrive Interactive, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01020 Timothy J. Yoo, Chapter 7 Trustee v. Texas Email Company, LLC

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01020. Complaint by Timothy J. Yoo, Chapter 7 Trustee against Texas Email Company, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 4-16-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 6-26-19**

Tentative Ruling:

4/15/2019

The Clerk of the Court entered Defendant's default on April 10, 2019. Doc. No. 11. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a Motion for Default Judgment by no later than **May 31, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference is set for **July 16, 2019, at 10:00 a.m.** Plaintiff shall file a Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please**

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CONT... Blue Global, LLC

Chapter 7

first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

Texas Email Company, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:19-01061 Rosendo Gonzalez, Chapter 7 Trustee v. TCG Assets, Inc., a Colorado

#6.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01061. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against TCG Assets, Inc., a Colorado corporation, TCG International Holdings, Inc., a Florida corporation, Michael B. Citron, an individual, Kenneth R. Morris, an individual, Law Office of Kenneth R. Morris LLC, a Colorado limited liability company, The Ulzheimer Group LLC, a Georgia limited liability, John Ulzheimer, an individual, Nicholas Moffat, an individual. (Charge To Estate). Complaint for 1. Avoidance of Transfers Pursuant to 11 U.S.C. § 544; 2. Avoidance of Avoidable Transfers Pursuant to 11 U.S.C. § 548; 3. Recovery on Account of Avoided Transfers Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Funds of Estate Pursuant to 11 U.S.C. § 542; and 5. Breach of Fiduciary Duty Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Melissinos, C)

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Docket 1

Tentative Ruling:

7/15/2019

Defendants have not responded to the Complaint. On May 10, 2019, the Court approved a stipulation extending the Defendants' deadline to respond to the Complaint to June 7, 2019. Doc. No. 18. The Chapter 7 Trustee (the "Trustee") has subsequently agreed to further extend Defendants' response deadline to July 8, 2019. The Trustee is engaged in settlement discussions with Defendants' counsel, and believes that the matter is close to settlement. Defendants' counsel is located in Fort Lauderdale, Florida, is not licensed in the State of California, and represents Defendants only for settlement purposes.

Based upon the foregoing, and having reviewed the Trustee's Unilateral Status

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CONT... Green Jane Inc

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Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Pursuant to the Trustee's request, a continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 2) Based upon the Trustee's representation that the matter is close to settlement, the Court will not order formal mediation at this time.
- 3) In view of the extension of the deadline for Defendants to respond to the Complaint, the litigation deadlines previously ordered shall be extended, as follows:
 - a) The last day to amend pleadings and/or join other parties is **9/12/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/24/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/23/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/11/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **2/18/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/22/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/10/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU)

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CONT...

Green Jane Inc

Chapter 7

system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(3)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(3)(h)(ii), and shall be filed by the deadline specified in ¶(3)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **3/23/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit

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CONT...

Green Jane Inc

Chapter 7

binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

TCG Assets, Inc., a Colorado	Pro Se
TCG International Holdings, Inc., a	Pro Se
Michael B. Citron, an individual	Pro Se
Kenneth R. Morris, an individual	Pro Se
Law Office of Kenneth R. Morris	Pro Se
The Ulzheimer Group LLC, a	Pro Se
John Ulzheimer, an individual	Pro Se
Nicholas Moffat, an individual	Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
C John M Melissinos

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By

Thomas A Willoughby

Keith Patrick Banner

C John M Melissinos

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10:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

#7.00 Status Hearing RE: [1] Adversary case 2:19-ap-01128. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Janet Estrada, Steven Molina. (Charge To Estate). -Complaint to Avoid Voidable Transactions and for Turnover Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (11 (Recovery of money/property - 542 turnover of property)) (D'Alba, Michael)

Docket 1

Tentative Ruling:

7/15/2019

Default was entered against both Defendants on June 19, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **August 16, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... **Manuel Macias**

Chapter 7

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon - SUSPENDED -

Defendant(s):

Janet Estrada

Pro Se

Steven Molina

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Michael G D'Alba

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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2:18-11795 Alana Gershfeld

Chapter 7

Adv#: 2:19-01052 Dye v. Khasin et al

#8.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01052. Complaint by Carolyn A Dye against Maria Khasin, Larry A. Khasin, M & L Living Trust. (Charge To Estate).
Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. §§ 544 And 548; (2) To Recover Avoided Transfers Pursuant To 11 U.S.C. § 550; And,(3) Automatic Preservation Of Avoided Transfer Pursuant To 11 U.S.C. § 551
Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))
(Gonzalez, Rosendo)

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Docket 1

Tentative Ruling:

7/15/2019

On February 22, 2019, the Court issued a Scheduling Order [Doc. No. 4], which the Plaintiff served upon the Defendants on March 14, 2019. Doc. No. 6. The Scheduling Order provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than ten days prior to the date set for the first status conference. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

Scheduling Order at ¶ 6.

In the Joint Status Report [Doc. No. 29] filed on June 28, 2019, Defendants checked the box indicating that they do not consent to entry of a final judgment by the Bankruptcy Court. However, Defendants did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. Therefore, Defendants are deemed consent to the Bankruptcy Court's authority to

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CONT... Alana Gershfeld

Chapter 7

enter a final judgment.

Having reviewed the Joint Status Report submitted by the parties, the Court

HEREBY ORDERS AS FOLLOWS:

- 1) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **6/13/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/29/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/28/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference

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CONT...

Alana Gershfeld

Chapter 7

and the preparation of the Pretrial Stipulation:

- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **1/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
 - 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on

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CONT...

Alana Gershfeld

Chapter 7

the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit an order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Alana Gershfeld

Represented By
Alla Tenina

Defendant(s):

Maria Khasin

Pro Se

Larry A. Khasin

Pro Se

M & L Living Trust

Pro Se

Plaintiff(s):

Carolyn A Dye

Represented By
Rosendo Gonzalez

Trustee(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

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2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01059 OBI Acquisition, LLC, a Delaware limited liability v. Stepper et al

#9.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01059. Notice of Removal to United States Bankruptcy Court of Litigation Pending in Los Angeles County Superior Court filed by David M. Goodrich, Chapter 7 Trustee for OBI Probiotic Soda, LLC by OBI Acquisition, LLC, a Delaware limited liability company. (Attachments: # 1 Appendix Adversary Cover Sheet # 2 Appendix Notice of Status Conference on Removal of Action) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica) WARNING: See entry [2] for corrective action. Attorney to file copy of State Court complaint. Modified on 3/4/2019 (Lomeli, Lydia R.).

fr: 4-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 10-15-19 AT 10:00 A.M.**

Tentative Ruling:

4/15/2019

On July 12, 2018 (the "Petition Date"), a Chapter 7 involuntary petition was commenced against OBI Probiotic Soda, LLC (the "Debtor"). An order for relief was entered on September 20, 2018 and a Chapter 7 Trustee (the "Trustee") was appointed.

On March 27, 2018, OBI Acquisition, LLC ("OBI Acquisition") filed a *Complaint for (1) Intentional Interference with Prospective Economic Relations, (2) Negligent Interference with Prospective Economic Relations, (3) Breach of Fiduciary Duty, and (4) Promissory Fraud* (the "Complaint") in the Los Angeles Superior Court (the "State Court") against Daniel Stepper ("Stepper"), Dino Sarti ("Sarti"), and LA Libations, LLC ("LA Libations"). OBI Acquisition brought the Complaint derivatively for the benefit of the Debtor, and named the Debtor as a nominal defendant solely in a derivative capacity.

On May 18, 2018, Stepper, Sarti, and LA Libations filed a Cross-Complaint against OBI Acquisition and various other parties (the "Stepper Cross-Complaint"). On July 3, 2018, Paul Phillips and various other parties filed a Cross-Complaint

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CONT... **OBI Probiotic Soda LLC**

Chapter 7

against OBI Acquisition (the "Phillips Cross-Complaint").

On February 28, 2019, the Trustee removed the action to the Bankruptcy Court. The Trustee asserts that the Complaint's derivative claims and the Stepper Cross-Complaint's claim for declaratory relief belong to the estate. The Trustee states that he intends to commence a separate adversary proceeding that will clarify which claims belong to the estate and which do not. The Trustee anticipates that once the additional complaint is on file, the two adversary proceedings can be consolidated or otherwise streamlined to promote judicial economy.

The Court finds that this action should not proceed until the Trustee has clarified his position with respect to which claims belong to the estate and which claims do not. By no later than **May 14, 2019**, the Trustee shall file the separate complaint referenced in the Status Report. A Status Conference pertaining to both this action and the separate complaint shall be held on **July 16, 2019, at 10:00 a.m.**, at which time the Court will determine whether consolidation of the proceedings is appropriate.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Daniel Stepper	Pro Se
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Dino Sarti	Pro Se
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L.A. Libations, LLC, a California	Pro Se
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Does 1-100 Inclusive	Pro Se
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Chapter 7

OBI Probiotic Soda, LLC, a

Pro Se

Plaintiff(s):

OBI Acquisition, LLC, a Delaware

Represented By
Kevin M Yopp

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

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2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01097 Goodrich v. Phillips et al

#10.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01097. Complaint by David M Goodrich against Paul Phillips, Jeff Bonyun, Scott Strasser, Soames Floweree, Eion Hu, Yongjae Kim, Kevin Barenblat, Jeffrey Rhodes, OBI Acquisition, LLC, a Delaware limited liability company, OBI Soda, LLC, a Delaware limited liability company, MB Growth Advisors Corporation, a Nevada corporation. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(81 (Subordination of claim or interest)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica)

FR. 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED 10-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Paul Phillips	Pro Se
Jeff Bonyun	Pro Se
Scott Strasser	Pro Se
Soames Floweree	Pro Se
Eion Hu	Pro Se
Yongjae Kim	Pro Se
Kevin Barenblat	Pro Se

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CONT... OBI Probiotic Soda LLC

Chapter 7

Jeffrey Rhodes Pro Se

OBI Acquisition, LLC, a Delaware Pro Se

OBI Soda, LLC, a Delaware limited Pro Se

MB Growth Advisors Corporation, a Pro Se

DOES 1-25 Pro Se

Plaintiff(s):

David M Goodrich

Represented By
Jessica L Bagdanov

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

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2:19-12915 John F Gallardo

Chapter 7

Adv#: 2:19-01120 Dye, solely in her capacity as Chapter 7 Trustee f v. Gallardo et al

#11.00 Status Hearing RE: [1] Adversary case 2:19-ap-01120. Complaint by Carolyn Dye against Mario Gallardo, Mary Gallardo. (Charge To Estate). Nature of Suit: (91 (Declaratory judgment)),(14 (Recovery of money/property - other)) (Iskander, Brandon)

Docket 1

Tentative Ruling:

7/15/2019

Having reviewed the Joint Status Report submitted by the parties, the Court
HEREBY ORDERS AS FOLLOWS:

- 1) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 2) In view of the parties' request that the matter not be ordered to mediation until after the completion of discovery, the Court will not order mediation at this time. The Court will most likely order the matter to formal mediation at the October 15, 2019 Status Conference.
- 3) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **8/15/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/26/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/26/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

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John F Gallardo

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calendar.)

- e) The last day for dispositive motions to be heard is **1/21/2020**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
- g) A Pretrial Conference is set for **2/11/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed

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10:00 AM

CONT...

John F Gallardo

Chapter 7

- supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(3)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(3)(h)(ii), and shall be filed by the deadline specified in ¶(3)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **2/24/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John F Gallardo

Represented By
Christopher J Langley

Defendant(s):

Mario Gallardo

Pro Se

Mary Gallardo

Pro Se

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CONT... John F Gallardo

Chapter 7

Joint Debtor(s):

Irene S Gallardo

Represented By
Christopher J Langley

Plaintiff(s):

Carolyn Dye, solely in her capacity

Represented By
Brandon J Iskander

Trustee(s):

Carolyn A Dye (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#12.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 9-10-19 AT 10:00 A.M.**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-1-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#14.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 9-10-19 AT 10:00 A.M.**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#15.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-1-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#16.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 3-12-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-14-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#17.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-21-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-23-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-30-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#20.00 Status Hearing to Monitor Consummation of the Settlements
RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 9-10-19 AT 10:00 A.M.**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#21.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 4-30-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#22.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: CASE DISMISSED 5-23-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#23.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 9-10-19 AT 10:00 AM.**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#24.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-24-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#25.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-9-19

Docket 1

***** VACATED *** REASON: DISMISSED 4-26-19**

Tentative Ruling:

4/8/2019

Hearing VACATED. The Court has entered an order setting a continued Status Conference to monitor consummation of the settlement for **July 16, 2019, at 10:00 a.m.** The continued Status Conference will go off calendar in the event the settlement has been consummated and the action has been dismissed.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#26.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CONTNUED 9-10-19 AT 10:00 A.M.**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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Tuesday, July 16, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11
determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#100.00 Pre-Trial Conference
RE: [10] Amended Complaint by Christian T Kim on behalf of Sam S. Leslie, Sam S Leslie (TR) against Leon Reihanian. (RE: related document(s)1 Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) filed by Plaintiff Sam S. Leslie). (Kim, Christian)

Docket 10

***** VACATED *** REASON: cont'd to 3/10/2020 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Represented By
Raymond H. Aver

DOES 1-20, inclusive

Pro Se

Abraham Reihanian, as Trustee of

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

CONT... Sharp Edge Enterprises

James A Dumas Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#101.00 Pre-Trial Conference RE: [12] Amended Complaint by Michael N Berke on behalf of Joseph Amin against Kami Emein. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Berke, Michael)

fr: 6-11-19

Docket 0

***** VACATED *** REASON: CONTINUED TO 9-10-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Represented By
Michael J Conway

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01273 Menchaca Chapter 7 Trustee v. Olivares et al

#102.00 Pre-Trial Conference
RE: [3] Amended Complaint Adversary case 2:18-ap-01273. by John Menchaca Chapter 7 Trustee against Johanna Olivares. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)),(72 (Injunctive relief - other)),(91 (Declaratory judgment))(Avery, Wesley)

Docket 1

***** VACATED *** REASON: CLOSED ON 3-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Johanna Olivares

Pro Se

DOES 1-20

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
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11:00 AM

CONT... Felix Anibal Diaz

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01274 Menchaca Chapter 7 Trustee v. Diaz et al

#103.00 Pretrial
RE: [2] Amended Complaint by Wesley H Avery on behalf of John Menchaca Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:18-ap-01274. Complaint by John Menchaca Chapter 7 Trustee against Felix Anibal Diaz, Cecilia Giron Diaz. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) filed by Plaintiff John Menchaca Chapter 7 Trustee). (Avery, Wesley)

Docket 2

***** VACATED *** REASON: CLOSED ON 3-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felix Anibal Diaz	Represented By Glenn Park
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Defendant(s):

Felix Anibal Diaz	Pro Se
Cecilia Giron Diaz	Pro Se

Joint Debtor(s):

Cecilia Giron Diaz	Represented By Glenn Park
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Plaintiff(s):

John Menchaca Chapter 7 Trustee	Represented By Wesley H Avery
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Trustee(s):

John J Menchaca (TR)	Represented By Wesley H Avery
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**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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CONT... Felix Anibal Diaz

Chapter 7

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01276 LeClair v. United States Of America (Treasury Department, Int

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01276. Complaint by Jeremy Wyatt LeClair against United States Of America (Treasury Department, Internal Revenue Service Division) . (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)). Adversary transferred-in from Western District of North Carolina (Charlotte) and Adversary Proceeding #: 18-03043 to Central District of California (Los Angeles). (Ly, Lynn) Additional attachment(s) added on 8/30/2018 (Ly, Lynn). Additional attachment(s) added on 8/30/2018 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 9-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

United States Of America (Treasury

Pro Se

Plaintiff(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 16, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01277 Verity Health System of California, Inc. v. Old Republic Insurance Company

#105.00 Pre-Trial Conference RE: [2] Amended Complaint Amended Only to Include Complete Pages to Complaint by Tania M Moyron on behalf of Verity Health System of California, Inc. against City National Bank, Old Republic Insurance Company.

Docket 0

***** VACATED *** REASON: DISMISSED 11-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

Defendant(s):

Old Republic Insurance Company

Pro Se

City National Bank

Pro Se

Plaintiff(s):

Verity Health System of California,

Represented By
Tania M Moyron
Samuel R Maizel

**United States Bankruptcy Court
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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

2:10-64833 Avishay Weinberg

Chapter 7

Adv#: 2:11-01901 Forward Progress Management Real Estate, Inc. v. Weinberg

#1.00 Hearing re [123] Application for appearance and examination re enforcement of judgment re AVISHAY WEINBERG

Docket 0

Tentative Ruling:

7/16/2019

Tentative Ruling:

Appearances required.

In its order requiring the judgment debtor to appear for examination, the Court ordered the judgment creditor to "file a proof of service establishing that the *Order for Appearance and Examination* has been served upon the examinee in accordance with the requirements of Cal. Code Civ. P. § 708.110" by no later than seven days prior to the judgment debtor examination. No such proof of service is on file.

Cal. Code Civ. P. § 708.110 requires the judgment creditor to personally serve the order compelling the judgment debtor to appear for examination by not less than ten days before the date set for the examination. The judgment creditor must appear to advise the Court of whether the *Order for Appearance and Examination* was properly served.

Party Information

Debtor(s):

Avishay Weinberg

Represented By
Charles Shamash

Defendant(s):

Avishay Weinberg

Pro Se

Plaintiff(s):

Forward Progress Management Real

Represented By

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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

CONT... Avishay Weinberg

Bradley J Pizer

Chapter 7

Trustee(s):

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

2:10-64842 Pedro Gabriel Tauber

Chapter 7

Adv#: 2:11-01899 Forward Progress Management Real Estate, Inc. v. Tauber

#2.00 Hearing re [143] Appearance and Examination re: Enforcement of Judgment re
PEDRO GABRIEL TAUBER

Docket 0

Tentative Ruling:

7/16/2019

Tentative Ruling:

Appearances required.

In its order requiring the judgment debtor to appear for examination, the Court ordered the judgment creditor to "file a proof of service establishing that the *Order for Appearance and Examination* has been served upon the examinee in accordance with the requirements of Cal. Code Civ. P. § 708.110" by no later than seven days prior to the judgment debtor examination. No such proof of service is on file.

Cal. Code Civ. P. § 708.110 requires the judgment creditor to personally serve the order compelling the judgment debtor to appear for examination by not less than ten days before the date set for the examination. The judgment creditor must appear to advise the Court of whether the *Order for Appearance and Examination* was properly served.

Party Information

Debtor(s):

Pedro Gabriel Tauber

Represented By
Charles Shamash

Defendant(s):

Pedro Gabriel Tauber

Pro Se

Plaintiff(s):

Forward Progress Management Real

Represented By

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Pedro Gabriel Tauber

Bradley J Pizer

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#3.00 Hearing
RE: [55] Motion to Amend (related document(s)1 Complaint) Notice Of Motion
And Motion For Leave To Modify Scheduling Order To Permit Filing Of First
Amended Complaint; Memorandum Of Points And Authorities; Declarations Of
Thomas J. Eastmond And Linda Lee In Support with proof of service

fr. 4-23-19; 5-7-19

Docket 55

***** VACATED *** REASON: CONTINUED 8-20-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT...

JW Wireless Inc.

Chapter 7

Shaigan Ben Her, an individual

Represented By
Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

2:17-17843 Berger Bros., Inc.

Chapter 7

#4.00 HearingRE: [65] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) ; Approve Overbid Procedure; Find Purchaser is a Good Faith Purchaser; and Authorizing Payment of Breakup Fee; Declarations in Support. (Attachments: # 1 Exhibits # 2 Proof of Service) (Yoo, Timothy)

Docket 65

Tentative Ruling:

7/16/2019

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Partnership Liquidity Investors IV, LLC
- 2) Property for Sale: Limited partnership interest (0.9473%) in I.C. Hospitality Fund, L.P.
- 3) Purchase price: \$180,000
- 4) Overbids: The initial overbid shall be \$190,000. Subsequent overbids shall be in increments of \$5,000.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Estate's Right, Title, and Interest in Personal Property Free and Clear of Liens; (2) Approving Overbid Procedure; (3) Finding Purchaser is a Good Faith Purchaser; and (4) Authorizing Payment of Breakup Fee [Doc. No. 65] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 66]
 - b) Notice of Sale of Estate Property [Doc. No. 67]
 - c) Declaration of Timothy J. Yoo in Support of [Sale Motion] [Doc. No. 70]
- 2) No opposition to the Sale Motion is on file

I. Facts and Summary of Pleadings

Berger Bros., Inc. (the "Debtor") filed a voluntary Chapter 7 petition on June 27, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell a 0.9743% limited partnership interest in I.C. Hospitality Fund, L.P. (the "Interest") to Partnership

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10:00 AM

CONT... **Berger Bros., Inc.**

Chapter 7

Liquidity Investors IV, LLC (the "Purchaser"). The purchase price is \$180,000.

The Trustee provided notice of the Sale Motion to all creditors. A notice specifying the key terms of the sale was posted on the Court's website. In addition, the Trustee forwarded the Sale Motion to parties who have in the past purchased limited partnership interests from bankruptcy estates. Specifically, the Trustee sent the Motion to JM Partners, Pearlman & Tishbi, Terre Verte Company, Inc., LHB Ventures, LLC, and LCG USA. No overbidders tendered a deposit by the July 10, 2019 deadline proposed in the Sale Motion.

No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

Section 363(f)(4) provides that estate property may be sold free and clear of any interest that is subject to a bona fide dispute. Santa Barbara Bank & Trust ("Santa Barbara Bank") recorded a security interest against the Interest on November 5, 2002. Hathaway Dinwiddie Construction Company ("Hathaway") recorded a security interest against the Interest on January 15, 2008. Cal. Comm. Code § 9515(a) provides that "a filed financing statement is effective for a period of five years after the date of filing." To the extent that Santa Barbara Bank and/or Hathaway assert liens against the Interest, the Court finds that the liens are in bona fide dispute, based upon the Trustee's assertion that the financing statements have lapsed. Therefore, the sale is free and clear of any lien asserted by Santa Barbara Bank and/or Hathaway.

The Court approves the overbid procedures proposed in the Sale Motion, except that overbidders will be permitted to bid for the Interest provided that they have tendered a cashier's check in the amount of \$36,000 to the Trustee prior to the auction. The Sale Motion proposed that overbidders be required to tender the deposit by no later than July 10, 2019. In the interest of maximizing the sale price received by the estate, overbidders who have tendered the deposit after the proposed deadline but prior to the auction will be permitted to participate.

Having reviewed the declaration of Jerome A. Fink, the manager of the Purchaser,

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Wednesday, July 17, 2019

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10:00 AM

CONT... **Berger Bros., Inc.**

Chapter 7

the Court finds that the Purchaser is entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

The Trustee seeks approval of a breakup fee of 10% of the ultimate sales price. The Court declines to approve a breakup fee expressed as a percentage of the ultimate sales price, rather than as a percentage of the stalking horse bid. Breakup fees are typically calculated as a percentage of the stalking horse bid. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 662 (S.D.N.Y. 1992) ("A break-up fee should constitute a fair and reasonable percentage of the *proposed purchase price*, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser") (emphasis added); *see also In re NEC Holdings Corp.*, Case No. 10-11890 (PJW) (Bankr. D. Del. Jul 30, 2010) (Docket No. 303) (approving break-up fee and expense reimbursement of approximately 3.5% of the stalking horse purchase price); *In re Leiner Health Prods. Inc.*, Case No. 08-10446 (KJC) (Bankr. D. Del. May 30, 2008) (Docket No. 358) (approving break-up fee and expense reimbursement of 3% of the stalking horse purchase price). Calculating the breakup fee as a percentage of the ultimate sales price, as proposed by the Trustee, would make it impossible for the Court to ascertain the amount of the breakup fee until after conclusion of the auction. This would prevent the Court from ensuring that the breakup fee does not chill bidding.

The Court will approve a breakup fee of 10% of the stalking horse bid—that is, \$18,000 (10% of \$180,000). The Court finds that a breakup fee of \$18,000 is reasonable and will not chill bidding. The fact that the breakup fee is high when expressed in percentage terms is acceptable given the comparatively small size of the transaction.

The Trustee is authorized to execute and deliver on behalf of the estate any and all documents necessary to implement the sale. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid shall be \$190,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders

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CONT... Berger Bros., Inc.

Chapter 7

must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Party Information

Debtor(s):

Berger Bros., Inc.

Represented By
Dean G Rallis Jr

Trustee(s):

Heide Kurtz (TR)

Represented By
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

2:12-31372 First Regional Bancorp

Chapter 11

#5.00 Hearing re [527] *Final Accounting for the First Regional Bancorp Liquidating Trust*

Docket 0

Tentative Ruling:

7/16/2019

For the reasons set forth below, Wilmington's request that the Liquidating Trustees be required to disgorge \$420,000 in fees is DENIED. The Court will enter a final decree and an order closing the case.

Pleadings Filed and Reviewed:

- 1) Order Setting Hearing on Wilmington Trust Company's Objection to the Liquidating Trustees' Final Accounting [Doc. No. 534]
- 2) Final Accounting for the First Regional Bancorp Liquidating Trust [Doc. No. 527] (the "Final Accounting")
 - a) Declaration of Michael Zaitzeff in Support of the Final Accounting for First Regional Bancorp Liquidating Trust [Doc. No. 528]
 - b) Declaration of Vikaran Ghei in Support of the Final Accounting for First Regional Bancorp Liquidating Trust [Doc. No. 529]
 - c) Declaration of Joh L.R. Dalberg in Support of Liquidating Trustees' Final Accounting [Doc. No. 530]
- 3) Notice of Motion and Motion in Chapter 11 Case for the Entry of A Final Decree and Order Closing Case [Doc. No. 521]
- 4) Objection of Wilmington Trust Company to Liquidating Trustees' (I) Motion in Chapter 11 Case for the Entry of a Final Decree and Order Closing the Case and (II) Final Accounting [Doc. No. 531]
 - a) Objection and Reservation of Rights of Wilmington Trust Company to Liquidating Trustees' Motion in Chapter 11 Case for the Entry of a Final Decree and Order Closing the Case [Doc. No. 525]
- 5) Liquidating Trustees' Reply to Objection of Wilmington Trust Company to Liquidating Trustees' (I) Motion in Chapter 11 Case for the Entry of a Final Decree and Order Closing the Case and (II) Final Accounting [Doc. No. 537]

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Wednesday, July 17, 2019

Hearing Room 1568

10:00 AM

CONT... First Regional Bancorp

Chapter 11

I. Facts and Summary of Pleadings

On August 23, 2013, the Court entered an order confirming the Debtor's *Second Amended Chapter 11 Liquidating Plan* (the "Plan"). *See* Doc. No. 257 (the "Confirmation Order"). The Plan establishing a Liquidating Trust and appointed Vikaran Ghei and Michael Zaitzeff to serve as the Liquidating Trustees. The Plan provided that the Liquidating Trustees would receive a flat combined monthly fee of \$10,000 (that is, \$5,000 for each Liquidating Trustee) for administering the Liquidating Trust.

Following confirmation of the Plan, the Liquidating Trustees pursued litigation against a receiver appointed by the Federal Deposit Insurance Corporation (the "FDIC-R"), in the hopes of recovering an approximate \$22 million refund of federal income taxes. As set forth in the Liquidating Trustee's *Ninth Post-Confirmation Status Report*, filed on March 9, 2018, that litigation came to a conclusion without any recovery for the Liquidating Trust. As a result, the Liquidating Trustees stated that they would begin winding up this bankruptcy case.

On April 19, 2019, the Liquidating Trustees filed a motion seeking entry of a final decree (the "Motion for Final Decree"). Wilmington Trust Company ("Wilmington") opposed the Motion for a Final Decree. Among other things, Wilmington argued that the Liquidating Trustees had not provided sufficient disclosure regarding their administration of the estate's assets.

On April 25, 2019, the Court ordered the Liquidating Trustees to file a final accounting of the administration of estate assets (the "Final Accounting"). *See* Doc. Nos. 522–23. The Court stated that a final decree would not be entered until Wilmington had been provided an opportunity to object to the Final Accounting.

On May 31, 2019, the Liquidating Trustees filed the Final Accounting. According to the Final Accounting, the Liquidating Trust collected assets totaling \$968,287.83. The Liquidating Trust is administratively insolvent, and no assets have been distributed to creditors. A total of \$520,000 has been distributed to the Liquidating Trustees on account of the flat monthly fees provided for in the Plan.

Wilmington requests that the Court disallow all but \$100,000 of the monthly flat fees incurred by the Liquidating Trustees, and order the Liquidating Trustees to return the balance of \$420,000 to the estate to be distributed to creditors. Wilmington states that had it known that the Liquidating Trustees intended to pursue fruitless litigation against the FDIC-R, it would have opposed the \$10,000 per month flat fee. According to Wilmington, the Liquidating Trustees should have realized that the litigation could

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not possibly succeed in view of the lack of a tax sharing agreement between the Debtor and its wholly owned subsidiary, First Regional Bank of California (the "Bank"). Wilmington contends that the Liquidating Trustees pursued the litigation only to incur significantly monthly fees.

The Liquidating Trustees oppose Wilmington's request for disgorgement for the following reasons:

- 1) The Liquidating Trust Agreement gives the Liquidating Trustees "absolute discretion to pursue or not to pursue any and all Claims and Estate Causes of Action," and provides that the Liquidating Trustees "shall have no liability for the outcome of [their] decision, except as such decision may constitute an act of gross negligence, willful misconduct, or fraud." The Liquidating Trustees' decision to pursue the tax refund litigation was not grossly negligent. To the contrary, the Liquidating Trustees pursued the litigation in good faith after consulting with experienced counsel.
- 2) Wilmington agreed to the monthly flat fee on the record at the Confirmation Hearing. The record reflects that when Wilmington agreed to the flat fees, it understood that, in contrast to fees incurred by other professionals, the flat fees would not be subject to the opportunity to object on the basis of reasonableness.
- 3) Wilmington suggests that as of the Confirmation Hearing, it was not aware that the tax refund was an asset of the estate. Wilmington deposed the Debtor's Chief Restructuring Officer (the "CRO") prior to the Confirmation Hearing. At that deposition, Wilmington questioned the CRO regarding the tax refund.

II. Findings and Conclusions

A. Wilmington's Request that the Liquidating Trustees Be Required to Disgorge \$420,000 in Fees is Denied

Wilmington's request that the Liquidating Trustees be required to disgorge \$420,000 in monthly flat fees is denied. There is no merit to Wilmington's contention that the tax refund litigation was doomed from the outset and that the Liquidating Trustees pursued such litigation only to enrich themselves.

The estate's primary asset was its claim against the FDIC-R for a tax refund in excess of \$22 million. After contested litigation before this Court, the District Court, and the Ninth Circuit, the Liquidating Trustees were unable to recover any of the tax

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refund. The absence of a recovery does not mean that the Liquidating Trustees should not have pursued the litigation. A review of the record shows that the litigation involved complicated facts and unsettled law. On April 8, 2015, this Court issued a 32 page ruling dismissing the Liquidating Trustees' claims with prejudice. Doc. No. 72, Adv. No. 2:14-ap-01221-ER. On August 16, 2016, the District Court affirmed the dismissal in an 18 page ruling. Doc. No. 119, Adv. No. 2:14-ap-01221-ER. The Ninth Circuit affirmed the dismissal in a brief ruling issued on November 20, 2017. Doc. No. 127, Adv. No. 2:14-ap-01221-ER.

Wilmington contends that the Liquidating Trustees should have realized that the absence of a written tax sharing agreement between the Debtor and the Bank was fatal to the estate's tax refund claim. In their First Amended Complaint against the FDIC-R, the Liquidating Trustees alleged that an Affiliated Transactions Policy ("ATP") between the Debtor and the Bank constituted an implied tax sharing agreement, and therefore governed the allocation of tax refunds between the Debtor and Bank. The Court found that the Liquidating Trustees had not pleaded facts sufficient to show that the ATP amounted to an implied contract.

Given that the tax refund was the estate's primary asset, it was not unreasonable for the Liquidating Trustees to pursue the litigation in this Court, and to appeal this Court's dismissal of the tax refund claims to the Ninth Circuit. In many similar cases, bank holding companies have reached settlements with the FDIC even in the absence of executed tax sharing agreements. Through such settlements, bank holding companies have obtained recoveries ranging from between 2% to 14% of the amount of the tax refund. *See, e.g., In re DBT Holding Company*, Case No. 11-60177 (14% recovery) (Bankr. S.D. Ga.); *In re Corus Bankshares, Inc.*, Case No. 10-26881 (Bankr. N.D. Ill.) (8% recovery) (Bankr. N.D. Ill.); *In re Commerce Bancorp, Inc.*, Case No. 09-23477 (Bankr. N.D. Ill.) (2% recovery). Even a settlement at the lower end of this range would have resulted in a substantial recovery to the estate. Further, had the Liquidating Trustees succeeded in obtaining reversal of the dismissal, the recovery to the estate could potentially have been greater than those achieved in similar cases.

Wilmington contends that it agreed to the monthly flat fee at the Confirmation Hearing only because it was not aware that the Liquidating Trustees intended to pursue the tax refund litigation. Wilmington's alleged lack of awareness does not warrant disgorgement. The Liquidating Trust Agreement, which was approved by way of the Confirmation Order, provides in relevant part:

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Except as expressly set forth in this Agreement, the Trustees shall have absolute discretion to pursue or not to pursue any and all Claims and Estate Causes of Action or other matters, activities or things as it determines is in the best interests of the Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of its decision, except as such decision may constitute an act of gross negligence, willful misconduct, or fraud.

Liquidating Trust Agreement at ¶ I.D.

The Plan clearly provided that the Liquidating Trustees would have the ability to pursue any and all claims on behalf of the estate. If Wilmington was dissatisfied with this broad grant of authority to the Liquidating Trustees, its remedy was to appeal the Confirmation Order. Wilmington is not entitled to retroactively rewrite the terms of the confirmed Plan because it is unhappy with the Liquidating Trustees' administration of the Liquidating Trust.

B. The Liquidating Trustees' Motion for Entry of a Final Decree is Granted

Pursuant to § 350(a) and Bankruptcy Rule 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

The estate has been fully administered. The Plan establishing the Liquidating Trust was confirmed on August 23, 2013. The Liquidating Trustees have completed

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the administration of the Liquidating Trust's assets. Entry of a final decree and order closing the case is appropriate.

III. Conclusion

For the reasons set forth above, Wilmington's request that the Liquidating Trustees be required to disgorge \$420,000 in fees is DENIED. The Court will enter a final decree and an order closing the case.

The Liquidating Trustees shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L. Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur
John A Moe II

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2:14-25758 Wesley Brian Ferris

Chapter 11

#6.00 Post-Confirmation Status Conference re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16; 4-11-17; 7-11-17; 12-19-17; 5-16-18; 10-16-18; 3-13-19

Docket 109

Tentative Ruling:

7/16/2019

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Reorganized Debtor's Sixth Post-Confirmation Status Report [Doc. No. 244], the Court CONTINUES the status conference to November 13, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

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2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

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#7.00 Hearing re [65] Disclosure statement in support of plan of reorganization

Docket 0

Tentative Ruling:

7/16/2019

For the reasons set forth below, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than **July 26, 2019**, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Individual Debtor's [sic] Disclosure Statement in Support of Plan of Reorganization [Doc. No. 65] (the "Disclosure Statement")
2. Individual Debtor's [sic] Chapter 11 Plan of Reorganization [Doc. No. 66] (the "Plan")
3. Debtors' Notice of Hearing on Adequacy of Disclosure Statement Describing Debtors' Chapter 11 Plan of Reorganization Dated May 31, 2019 [Doc. No. 67]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors") filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). Both Debtors are employed and generate regular monthly income. The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$2,450 in monthly income.

On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured

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claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors presently seek approval of their Disclosure Statement. The following provisions are the material provisions of the Debtors' Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$15,968 on the Effective Date. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$6,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of \$1,968 in full over five years from the Petition Date, with 6% interest, in equal monthly installments of \$32.50.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. However, the Debtors are proposing to pay Honda the full amount of its \$19,708.60 claim, plus 6.75% interest, by making monthly installment payments of \$388 over a five-year period, beginning October 1, 2019. Honda's claim is impaired, and it is entitled to vote on the Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$26,044.41. The Debtors propose to

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pay this class 4% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$18.48. This class is impaired and entitled to vote on the Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- i. Approximately \$10,477 in anticipated cash on hand on the Effective Date.
- ii. A one-time \$6,000 family contribution.
- iii. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments. After deducting expenses and making all of the foregoing proposed Plan payments, the Debtors projections indicate that they will only have approximately \$1/month in net monthly income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure

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statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement is inadequate in the following respects:

1. The Debtors’ Liquidation Analysis (Disclosure Statement, Part 4, page 5) does not contain adequate information because it appears the only asset the Debtors have included in their "Net liquidation value of Debtors’ assets" is the anticipated cash on hand as of the Effective Date. While the Debtors did attach a copy of their Schedules A/B, they failed to include a comprehensive liquidation analysis for each asset. The Court finds this particularly troubling because there appears to be approximately \$52,521.64 in equity in the Rental Property and the Debtors have not included any analysis to support their conclusion that the Rental Property would have a \$0.00 liquidation value if the case were converted to a Chapter 7
2. The Disclosure Statement does not contain any discussion of the events which

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led to the bankruptcy filing, therefore creditors are unable to adequately evaluate the risks associated with voting in favor of the Debtors' Plan.

3. The Debtors' proposal to pay Honda the full amount of its Proof of Claim despite the Court's Vehicle Valuation Order bifurcating \$3,731.60 of the claim into an unsecured claim is unsupported by any meaningful explanation. The Debtors appear to be attempting to overpay Honda by paying its \$3,731.60 unsecured claim in full, with interest, while paying other similarly situated unsecured creditors only 4% of their claims. Accordingly, the Debtors' amended disclosure statement either needs to amend its proposed treatment of Honda's claim or provide a meaningful explanation for creditors to evaluation whether this payment is fair and equitable.

For the foregoing reasons, the Disclosure Statement does not contain adequate information and must be amended.

Additionally, although the following are plan confirmation issues, the Debtors should be aware of the following issues:

1. The Debtors have not attached a declaration or declaration(s) from the family member(s) contemplated to make the \$6,000 family contribution payment or any evidence to support the financial ability of that person or persons to make such payment. In support of any plan confirmation brief, the Debtors should be prepared to attach evidence to support this payment.
2. The Debtors' net monthly income after making all anticipated Plan payments is less than \$1. Therefore, the Debtors' plan confirmation brief must include adequate briefing to satisfy this Court that confirmation of the Plan is not likely to be followed by liquidation in the event any unforeseen expenses arise.
3. The Debtors are proposing to retain their interest in the Rental Property, while only paying general unsecured creditors 4% of their claims and not providing any new value contributions. Accordingly, the Debtors should be aware that they will not be able to satisfy the absolute priority rule unless Class 5(b) votes to accept the Plan.

III. Conclusion

For the reasons set forth above, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than

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July 26, 2019, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.**

Oppositions, if any, are due by August 21, 2019. The deadline for the Debtors to file a reply to any timely filed oppositions is August 28, 2019.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

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2:18-17353 Maria G Gallarza-Dominguez

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#8.00 Hearing
RE: [56] Disclosure Statement describing chapter debtor's chapter 11 plan of reorganization.

Docket 13

Tentative Ruling:

7/16/2019

CONTINUE HEARING to **August 13, 2019 at 11:00 a.m.** to be heard concurrently with the United States Trustee's Motion Under § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 71].

The Debtor is also directed to file an amended liquidation analysis in support of the Disclosure Statement by no later than **July 30, 2019**. The current Liquidation Analysis is inadequate because it does not adequately disclose what assets make up the \$65,293.58 "Net Liquidation Value of Debtor's Assets" figure. Furthermore, while the Debtor attaches a copy of her Schedules A and B, she failed to include a comprehensive liquidation analysis for each asset. The Court finds this particularly troubling because there appears to be equity in the Rives Property and the Debtor has not included any analysis to show that this equity has been accounted for in the Liquidation Analysis or to support the figure used.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

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2:18-20698 United International Mortgage Solutions, Inc.

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#9.00 Hearing re Confirmation of Debtors First Amended Chapter 11 Plan

fr. 4-10-19

Docket 0

*** VACATED *** REASON: CONTINUED 8-14-19 AT 11:00 A.M.

Tentative Ruling:

4/9/2019

The Court will require the Debtor to make a few minor amendments to the Disclosure Statement, as discussed below. Otherwise, the Court finds that the Disclosure Statement contains adequate information.

Pleadings Filed and Reviewed

1. Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 69] (the "Disclosure Statement")
2. Debtor's Chapter 11 Plan of Reorganization [Doc. No. 70] (the "Plan")
3. Notice of Hearing on Adequacy of Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 71]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns three residential real properties: (i) 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property"); (ii) 5935 Playa Vista Dr., #414, Playa Vista, CA 90094 (the "Playa Vista Property"); and (iii) 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties"). The Debtor filed this case to address several defaulted loans secured by

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liens on the Properties and to reorganize its affairs.

The Debtor seeks an order approving the adequacy of its Disclosure Statement. The Disclosure Statement explains the reasons for filing, describes the Debtor's assets and their values, and provides a summary of significant post-petition events. The Disclosure Statement describes the Debtor's proposed plan of reorganization, which will be funded by additional income generated from increased rents from the Virgil and Playa Vista Properties. The Debtor proposes the following classification scheme and treatment:

- **Class 1:** Secured claim of Seterus, Inc., as the authorized sub-servicer for Federal National Mortgage Association ("Seterus"). Seterus holds the first priority lien against the Virgil Property in the amount of \$882,107. The Debtor proposes to pay Seterus's claim in full, with 5.5% interest amortized over 30 years. Seterus will be repaid in two phases. The Debtor will make 120 monthly payments to Seterus in the amount of \$5,009. The Debtor will also deposit \$982 a month into a tax impound account on account of this claim. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Seterus's claim. Seterus's claim is impaired and it is entitled to vote on the Plan.
- **Class 2:** Secured claim of Errol Gordon ("Gordon"). Gordon holds the second priority lien against the Virgil Property in the amount of \$50,000. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$209. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.
- **Class 3:** Secured claim of Gordon. Gordon also holds the second priority lien against the Senford Property in the amount of \$300,701. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon's claim will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$1,257. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.

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- **Class 4**: Secured claim of Los Angeles County Treasurer and Tax Collector (the "LACTTC"). LACTTC holds a property tax lien against the Senford Property in the amount of \$97,939. The Debtor proposes to pay LACTTC's claim in full, with 18 interest, plus redemption penalty interest and any other fees, costs, or charges LACTTC is entitled to. The Debtor will make 60 monthly payments to LACTTC in the amount of \$2,487. LACTTC's claim is impaired and it is entitled to vote on the Plan.
- **Class 5**: Secured claim of Mr. Cooper/Nationstar ("Mr. Cooper"). Mr. Cooper holds the first priority lien against the Playa Vista Property in the amount of \$857,177. The Debtor proposes to pay Mr. Cooper's claim in accordance with the applicable loan obligations. As such, Mr. Cooper's claim is unimpaired and Mr. Cooper is not entitled to vote on the Plan.
- **Class 6**: Secured claim of Playa Vista Parks HOA ("PVP"). PVP holds an HOA lien against the Playa Vista Property in the amount of \$70,080. The Debtor proposes to pay PVP's claim in full, at 4% interest amortized over 40 years. PVP's claim will be repaid in two phases. The Debtor will make 120 monthly payments to PVP in the amount of \$323. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy PVP's claim. PVP's claim is impaired and it is entitled to vote on the Plan.
- **Class 7**: Secured claim of Villa d'Este HOA ("Villa"). Villa holds an HOA lien against the Playa Property in the amount of \$31,855. The Debtor proposes to pay Villa's claim in full, with 4% interest amortized over 40 years. The Debtor will make 120 monthly payments to Villa in the amount of \$323. Villa's claim is impaired and it is entitled to vote on the Plan.
- **Class 8**: Priority unsecured claims. The Debtor does not believe any priority unsecured claims exist.
- **Class 9**: General unsecured claims. The Debtor estimates that general unsecured claims total approximately \$723. These claims will be paid in full by the first day of the first month following the Effective Date. The Debtor submits that this proposed treatment renders general unsecured claims unimpaired and, accordingly, they would be deemed to accept the Plan and not entitled to vote.
- **Class 10**: Interest holders. Debtor's owners will retain their ownership interest in the Debtor.

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CONT... **United International Mortgage Solutions, Inc.**

Chapter 11

The Debtor also proposes to pay the Franchise Tax Board's priority claim within 36 months by making monthly payments of \$77. Resnik Hayes Moradi has consented to Debtor's proposal to repay its administrative claim, in an amount approved by this Court, by making monthly payments in the amount of \$1,000 until its claim is satisfied.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees;

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(13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Subject to the minor amendments discussed below, the Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement describes (1) the factors precipitating the Chapter 11 filing, (2) significant events that occurred during the Chapter 11 case, (3) the classification structure of the Plan, (4) a disclaimer, (5) risk factors, and (6) the means for execution of the Plan.

However, the Court will require the Debtor to file an amended disclosure statement and plan by no later than **April 24, 2019** to address the following two issues:

First, the Debtor proposes an Effective Date that is "the first business day that is fourteen (14) calendar days after the entry of the order confirming the Plan, with payment beginning by the first day of the following month." Disclosure Statement, p.5:18-20. This language is problematic because certain confirmation requirements mandate that effective date payments occur on the Effective Date. For example, for the Court to determine that Class 9 general unsecured claims are unimpaired, the Debtor must pay all claims in full on the Effective Date, rather than the proposed "first day of the month following the Effective Date." Therefore, the Debtor is directed to amend the language so that payments begin on the Effective Date.

Second, the Court notes that the Debtor's financial projections in Exhibit B state that they are for a period of "5 years," but only contain 12 months of projections. The Debtor is directed to file an amended Exhibit B with the full 5-year projections.

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Although the following are plan confirmation issues, the Debtor should also be prepared to present further evidence in support its confirmation brief regarding the feasibility of its proposed Plan. In its current form, the Plan proposes payment of certain obligations for months two through five, but the Debtor's projections set forth in Exhibit B to the Disclosure Statement reflect negative net monthly income for those months. The Court also notes the Debtor's proposed Plan will be funded, in part, from contributions from Sandra McBeth. As evidence of Ms. McBeth's financial ability to make such contributions, the Debtor attached Exhibit E, which purports to be copies of bank statements showing deposits and income from her employment as a real estate consultant. *See* Declaration of Sandra McBeth & Exhibit E. However, the bank accounts belong to Playa Vista Realty Group, Inc., and without more information about whether the statements capture all of Ms. McBeth's monthly income and expenses, the Court does not believe Exhibit E is sufficient evidence of Ms. McBeth's financial ability to fund the proposed Plan.

The following dates will apply:

- 1) A hearing will be held on the confirmation of the Debtor's First Amended Chapter 11 Plan (the "Plan") on **July 17, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the First Amended Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **April 26, 2019**. (As ordered above, the First Amended Disclosure Statement containing minor amendments described above must be filed by **April 24, 2019**.)
- 3) **June 14, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.
- 4) **June 26, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the

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requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.

- 5) **July 3, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **July 10, 2019** is fixed as the last day on which the Debtor may file and serve its reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#100.00 HearingRE: [2620] Application for Compensation [First Interim Fee Application Of Levene, Neale, Bender, Yoo & Brill L.L.P. For Approval Of Fees And Reimbursement Of Expenses; Declaration Of Monica Y. Kim, Esq. (POS Attached) (Attorneys for Jacob Nathan Rubin, MD, FACC, Patient Care Ombudsman)]- for Levene, Neale, Bender, Yoo & Brill LLP, Ombudsman Health, Period: 10/1/2018 to 4/30/2019, Fee: \$99,671.00, Expenses: \$1,035.52.

Docket 2620

Tentative Ruling:

7/16/2019

On May 24, 2019, the Debtors provided notice to professionals employed in this case that a hearing on interim fee applications would take place on August 14, 2019. *See* Notice to Professionals of Scheduled Hearing Date for Interim Fee Applications [Doc. No. 2446] (the "Notice"). Levene, Neale, Bender, Yoo & Brill LLP ("LNBYB") noticed a hearing on its first interim fee application on this date, rather than on the August 14 date specified in the Notice. For cases in which more than one professional has been employed, Local Bankruptcy Rule 2016-1(2) sets forth a procedure under which all fee applications are heard on the same date. Pursuant to this procedure, LNBYB should have set its interim fee application for hearing on August 14, 2019, concurrently with the hearings on the fee applications filed by other professionals. The Court will not require LNBYB to renotice this hearing for August 14, 2019. **However, in the future, professional fee applications that are not noticed in accordance with LBR 2016-1(2) will be denied.**

Turning to the merits, on October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and

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Chapter 11

served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On October 9, 2018, the Court entered an order appointing Jacob Nathan Rubin, MD as the patient care ombudsman (the "PCO") in these cases. Doc. No. 430. On November 2, 2018, the Court approved the PCO's application to employ LNBYB as its counsel. Doc. No. 751. For the fee period at issue, LNBYB has submitted seven Monthly Applications [Doc. Nos. 854, 1123, 1317, 1595, 1911, 2256, and 2457], none of which have been opposed. The Fee Procedures Order requires LNBYB to hold payments received from the Debtors in its trust account, until such time as the Court awards fees and costs to LNBYB in accordance with its Fee Applications.

No objections to the *First Interim Application of Levene, Neale, Bender, Yoo & Brill LLP for Approval of Fees and Reimbursement of Expenses* [Doc. No. 2620] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below:

Fees: \$99,671.00

Expenses: \$1,035.52

To the extent requested in the Application, LNBYB is authorize to transfer the fees and expenses awarded above from its trust account to its general operating account. **[Note 3]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Note 3

Pursuant to the Fee Procedures Order, LNBYB has been paid a total of \$89,976.62 in connection with its Monthly Applications. Those funds remain in LNBYB's trust account. LNBYB will not seek payment of the unpaid balance of \$10,729.90 until it files its final fee application.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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10:00 AM

2:19-12934 Marcesa Vega

Chapter 7

#1.00 HearingRE: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2573-2575 East Jefferson Street, Carson, CA 90810 . (Jafarnia, Merdaud)

Docket 16

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$506,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$599,147.82. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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CONT... Marcesa Vega

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

The Court notes that Debtor's case was dismissed on June 24, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marcesa Vega

Represented By
David R Chase

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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10:00 AM

2:19-15791 Katelin Renee Liley

Chapter 7

#2.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Honda Accord; VIN: 1HGCR2F34DA201370 . (Wang, Jennifer)

Docket 7

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Katelin Renee Liley

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Katelin Renee Liley

Represented By
Gregory M Shanfeld

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#3.00 HearingRE: [67] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11119 Doty Avenue, Inglewood, CA 90303 . (Castle, Caren)

Docket 67

Tentative Ruling:

7/19/2019

Tentative Ruling:

For the reasons set forth below, the R/S Motion is DENIED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 69] (the "R/S Motion")
2. Response to Motion Regarding the Automatic Stay and Declaration(s) in Support [Doc. No. 69] (the "Opposition")
3. As of the preparation of this tentative ruling, Movant has not filed a reply

I. Facts and Summary of Pleadings

Felix and Cecilia Diaz (the "Debtors") filed this voluntary chapter 7 case on July 6, 2018. Shortly thereafter, John J. Menchaca was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

Nations Direct Mortgage, LLC ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and for waiver of the 14-day stay prescribed by FRBP 4001(a)(3). Movant states that it holds a first-priority deed of trust against the Debtors' interest in real property located at 11119 Doty Avenue, Inglewood, CA 90303 (the "Property") securing debt in the amount of \$312,467 as of June 2, 2019. Movant further asserts that pursuant to the Debtors' schedules, the Property is worth \$645,000, and that the Debtors do not have any

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Chapter 7

equity in the Property after deducting Movant's claim, a second-priority deed of trust recorded in favor of Johanna Olivares secured \$324,000 in debt, and applicable costs of sale. Therefore, Movant contends that its interest in the Property is not protected by an adequate equity cushion.

On July 5, 2019, the Trustee filed a timely Opposition to the R/S Motion asserting that Movant's interest is more than adequately protected by an equity cushion because (i) the fair market value of the Property is \$680,000; (ii) the second-deed of trust has been avoided for the benefit of the estate so Movant's interest is the only encumbrance on the Property; and (iii) Movant's equity cushion is 106%. More importantly, the Trustee contends that the R/S Motion should be denied because the Trustee has a pending motion to sell the Property which, if granted, will result in full payment of Movant's lien within approximately thirty days.

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

Pursuant to 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Using Movant's figures, the Court finds that Movant is adequately protected by a 43.6% equity cushion. Furthermore, on July 11, 2019, the Court entered an order granting the Trustee's motion to sell the Property for \$680,000 [Doc. No. 71], which will result in Movant being paid in full through escrow very shortly. Therefore, Movant has not established that relief from stay is warranted under § 362(d)(1).

III. Conclusion

For the reasons set forth above, the R/S Motion is DENIED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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Hearing Room 1568

10:00 AM

2:19-16796 Young Jin Bae

Chapter 7

#4.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3910 West Commonwealth Ave., Fullerton, CA 92833 With Proof of Service.

Docket 11

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on March 19, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

The Court notes that Debtor's case was dismissed on June 28, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Young Jin Bae

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 22, 2019

Hearing Room 1568

10:00 AM

2:19-14374 Yolanda M Altamar

Chapter 7

#5.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 99 Hermosa Avenue, Hermosa Beach, CA 90254-5017 with proof of service. (Richey, Cassandra)

Docket 17

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and [multiple bankruptcy cases affecting the Property. Declaration of Rodney O'Neil Coaxum-Richardson in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed

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10:00 AM

CONT... Yolanda M Altamar

Chapter 7

circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

The Court notes that Debtor's case was dismissed on April 16, 2019 and that the case was reopened at Movant's request for the limited purpose of allowing Movant to seek the instant relief [Doc. No. 16]. The dismissal shall remain vacated for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Yolanda M Altamar

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 22, 2019

Hearing Room 1568

10:00 AM

2:19-16657 Ronald K. Perry

Chapter 7

#6.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2088 Central Avenue, Suite B, Duarte . (Long, Helen)

Docket 8

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on May 23, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Ronald K. Perry

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ronald K. Perry

Represented By
Steven B Lever

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 22, 2019

Hearing Room 1568

10:00 AM

2:19-16164 Gabriela Meza

Chapter 7

#7.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Mercedes Benz C-Class .

Docket 9

Tentative Ruling:

7/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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10:00 AM

CONT... Gabriela Meza

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Gabriela Meza

Represented By
Daniel King

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 22, 2019

Hearing Room 1568

10:00 AM

2:19-17982 Kimber Marie Kabel

Chapter 7

#8.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 10809 Wellworth Avenue, Los Angeles, CA 90024 .

Docket 7

Tentative Ruling:

7/19/2019

Tentative Ruling:

For the reasons set forth herein, CONTINUE HEARING to **August 5, 2019 at 10:00 a.m.** The proof of service [Doc. No. 7] does not reflect that the Motion was served on the Debtor, individually, via posting or personal service, as required by Judge Robles' self-calendaring procedures for Residential Unlawful Detainer Actions brought on shortened notice. *See also* Local Bankruptcy Rules 4001-1(c)(1)(C)(i) and 9013-1(d)(1) (requiring service on both the Debtor and the Debtor's attorney).

By no later than **July 24, 2019**, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Motion and Notice on the Debtor by posting or personal service; and (iii) file a proof of service evidencing compliance with this ruling. Failure to timely comply with any of the foregoing will result in denial of the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 22, 2019

Hearing Room 1568

10:00 AM

CONT... Kimber Marie Kabel

Chapter 7

Debtor(s):

Kimber Marie Kabel

Represented By
Norma Duenas

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing
RE: [1980] Application for Administrative Expenses (Valentine, Cecelia)

FR. 4-24-19; 5-8-19; 6-5-19; 6-18-19

Docket 1980

***** VACATED *** REASON: WITHDRAWN PER ORDER ENTERED 7-8-19**

Tentative Ruling:

5/7/2019

No appearances required. The Court has approved the parties' stipulation to continue this hearing to **June 5, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 23, 2019

Hearing Room 1568

10:00 AM

2:19-13059 Norberto Pimentel and Erica Pimentel

Chapter 7

#2.00 Hearing re [29] Debtors' Motion to Convert Case Under 11 U.S.C. §§706(a)

Docket 0

Tentative Ruling:

7/22/2019

For the reasons set forth below, the Conversion Motion is DENIED.

Pleadings Filed and Reviewed

1. Debtor's Motion to Convert Case Under 11 U.S.C. §§706(a) or 1112(a) [Doc. No. 29] (the "Conversion Motion")
2. Order Setting Hearing on Debtors' Motion to Convert Case and Related Briefing Deadlines [Doc. No. 33] (the "Order")
3. Chapter 7 Trustee's Opposition to Debtors' Motion to Convert Case Under 11 U.S.C. §§ 706 or 1112(a) [Doc. No. 39] (the "Opposition")
4. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Norberto and Erica Pimentel (together, the "Debtors") filed this voluntary Chapter 7 case on March 20, 2019 (the "Petition Date"). Shortly thereafter Wesley Avery was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On June 13, 2019, the Debtors filed the Conversion Motion seeking to convert this case to a case under Chapter 13. The Debtors submit that conversion is sought in good faith because the case has not been previously converted and the Debtors are eligible for relief under Chapter 13.

On June 18, 2019, the Court issued its Order setting the matter for hearing and setting related briefing deadlines. Among other things, the Order directed the Debtors to give notice of the hearing date and applicable briefing deadlines by no later than June 28, 2019 and to file a proof of service evidencing service in accordance with the

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10:00 AM

CONT... Norberto Pimentel and Erica Pimentel

Chapter 7

Order [Doc. No. 33]. As of the preparation of this tentative ruling, the Debtors have failed to comply.

Notwithstanding the Debtors' failure to give notice, the Trustee filed a timely Opposition asserting that the Debtors do not qualify to be Chapter 13 Debtors because they have not submitted any evidence of their ability to make plan payments and because their expenses appear to be understated such that they may not have any disposable net monthly income to repay creditors through a chapter 13 plan. The Trustee also argues that the Debtors have acted in bad faith by failing to adequately disclose assets and making false statements and representations in their schedules and under oath at the 341(a) meeting of creditors. Furthermore, based on these allegations, on May 20, 2019, the Trustee initiated an adversary proceeding against the Debtors by filing a Complaint asserting a claim for relief under § 727(a)(4)(A) [*See Avery v. Pimentel et al.*, 2:19-ap-01146-ER (the "Discharge Action")]. Therefore, the Trustee argues that the Debtors request to convert their case is a bad faith attempt to avoid litigating the Discharge Action.

As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the Debtors failed to comply with this Court's Order directing them to give notice of the hearing on their Conversion Motion. Accordingly, on this basis alone, the Conversion Motion must be denied.

Additionally, and alternatively, the Court finds that sufficient grounds exist to deny the Conversion Motion on the merits. Section 706 provides that a "debtor may convert a case under [Chapter 7] to a case under chapter 13 . . . of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable." 11 U.S.C. § 706(a). However, conversion is subject to § 706(d), which states "[n]otwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter." 11 U.S.C. § 706(d).

In *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), the Supreme Court considered whether § 706(a) provided a Chapter 7 debtor the absolute

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10:00 AM

CONT... Norberto Pimentel and Erica Pimentel Chapter 7

right to convert to Chapter 13. Noting that § 1307(c) permits the bankruptcy court to convert or dismiss a Chapter 13 case for "cause," the *Marrama* Court found that the bankruptcy court was not required to convert a Chapter 7 case to Chapter 13 where circumstances existed that would justify dismissal under § 1307(c):

Nothing in the text of either § 706 or § 1307(c) (or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor. On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

Id. at 374-75 (footnotes omitted).

In determining whether a debtor has engaged in bad-faith conduct, the bankruptcy court must review the "totality of the circumstances." *In re Yan Sui*, 2013 WL 1397416, at *7 (B.A.P. 9th Cir. Apr. 4, 2013) *aff'd*, 2014 WL 3037618 (9th Cir. July 7, 2014). A bankruptcy court should consider:

- (1) whether the debtor misrepresented facts in his or her petition or plan, unfairly manipulated the Bankruptcy Code or otherwise filed the chapter 13 petition or plan in an inequitable manner;
- (2) the debtor's history of filings and dismissals;
- (3) whether the debtor's only purpose for filing the chapter 13 protection is to defeat state court litigation; and
- (4) whether egregious behavior is present.

Id. at *7-8 (citing *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999)). A finding of bad faith does not require fraudulent intent by the debtor. *Id.*

In this case, the Trustee has raised sufficient concerns regarding the Debtors' bad-faith conduct in this case and the Debtors have failed to respond to refute those arguments. Therefore, on this record, the Court finds that the Debtors' request to

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Hearing Room 1568

10:00 AM

CONT... **Norberto Pimentel and Erica Pimentel**

Chapter 7

convert this case to a case under chapter 13 is sought in bad faith in an attempt to defeat the Discharge Action. The record also supports a finding that the Debtors have engaged in egregious behavior by failing to provide accurate and complete information in their schedules and in response to questioning under oath (*see e.g. Farrar v. Sandoval*, 2005 WL 6960187, at *7, fn 12 (B.A.P. 9th Cir. Aug. 3, 2005) (internal citations omitted) ("‘Egregious’ conduct has been described as unexcused and unjustified dishonesty . . . [o]r, it may be ‘behavior that demonstrates bad faith and prejudices creditors—for example, concealing information from the court . . .").

III. Conclusion

For the reasons set forth above, the Conversion Motion is DENIED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Norberto Pimentel

Represented By
Marcus Gomez

Joint Debtor(s):

Erica Pimentel

Represented By
Marcus Gomez

Trustee(s):

Wesley H Avery (TR)

Represented By

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10:00 AM

CONT...

Norberto Pimentel and Erica Pimentel

Adam Stevens

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing

RE: [2637] Motion to Extend Time / Notice of Motion And Third Motion For Entry of An Order Pursuant To § 365(D)(4) of The Bankruptcy Code Extending The Time To Assume or Reject Unexpired Leases of Nonresidential Real Property; Declaration of Richard Adcock In Support Thereof

Docket 2637

***** VACATED *** REASON: CONTINUED 7-24-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Tuesday, July 23, 2019

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 7

#4.00 HearingRE: [472] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) .

Docket 472

Tentative Ruling:

7/22/2019

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Oliver Smith and Margaret Smith
- 2) Property for sale: 4702 West 165th St., Lawndale, CA 90260
- 3) Purchase price: \$660,000
- 4) Overbids: The initial overbid shall be \$670,000. Subsequent overbids shall be in increments of \$5,000.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion for Authority to Sell Estate Property (4702 W. 165th St., Lawndale, CA 90260) Free and Clear of All Liens, Claims, and Interests [Doc. No. 472] (the "Sale Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 465]
 - b) Order Granting Application for Order Setting Hearing on Shortened Notice [Doc. No. 474]
 - c) Declaration of Shana Y. Stark Regarding Service of Order Granting Application for Order Setting Hearing on Shortened Notice [Doc. No. 477]
- 2) No opposition to the Sale Motion is on file

I. Facts and Summary of Pleadings

Deborah Earle (the "Debtor") filed a voluntary Chapter 11 petition on December 9, 2012. On April 25, 2016, the Court confirmed the Debtor's Chapter 11 Plan of Reorganization (the "Plan"). Doc. No. 387. After the Debtor failed to remain in compliance with the reporting requirements imposed by the Office of the United

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CONT... Deborah Earle

Chapter 7

States Trustee (the "UST"), the Court converted the case to Chapter 7. On July 11, 2019, the Court granted the Debtor's motion to reconvert the case to Chapter 11. Doc. No. 476.

The Debtor moves to sell real property located at 4702 West 165th Street, Lawndale, CA (the "Property") free and clear of liens, claims, and interests. The proposed purchasers are Oliver Smith and Margaret Smith (the "Buyers"). The sale is subject to overbids.

II. Findings and Conclusions

Section 363(b) permits the debtor to sell estate property out of the ordinary course of business, subject to court approval. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Debtor has demonstrated sufficient business justification for the sale. The sale will generate proceeds sufficient to pay the administrative claim of the Law Offices of Alik Segal, as well as secured claims and tax claims asserted against the Property.

Section 363(f)(3) provides that estate property may be sold free and clear of liens, provided that the sales price exceeds the aggregate value of all such liens. Here, the sales price of \$660,000 exceeds the aggregate value of all liens asserted against the Property. Pursuant to § 363(f)(3), the sale is free and clear of liens, claims, and interests.

The Court approves the overbid procedures set forth in the Sale Motion. The initial overbid shall be \$670,000. Subsequent overbids shall be in increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding (see "Auction Procedures," below).

The Court notes that the Debtor did not submit Form 6004-2, *Notice of Sale of Estate Property*. Notice of the sale was provided to creditors and interested parties, and the Property was extensively marketed. Notwithstanding the Debtor's failure to submit Form 6004-2, the Court will permit the sale to go forward.

Having reviewed the declaration of the Debtor, the Court finds that the Buyers are entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether § 363(m) protections are warranted.

The Debtor is authorized to pay, directly from escrow, the real estate broker's commissions, repair costs, and other costs of sale, except that the Debtor is not authorized to pay "bankruptcy administrative fees to A.O.E. Law & Associates in the

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10:00 AM

CONT...

Deborah Earle

Chapter 7

approximate amount of \$10,000." Sale Motion at 8. On October 5, 2015, the Court entered an order approving the Debtor's employment of A.O.E. Law & Associates ("AOE") as her general bankruptcy counsel. Doc. No. 324. AOE has not submitted an application for compensation as required by § 330. AOE must obtain approval of a properly noticed application for compensation before receiving payment from the estate. The Court notes that the Plan [Doc. No. 353] provides that "Debtor will pay the professional fees of [AOE] of \$12,000 in monthly installment[s] of \$200 for 60 months starting on the first day of the month after the Effective Date of the plan." Plan at Art. I.A. However, the Plan also provides that "[p]rofessional fees may only be paid upon application to and approval by the court." Art. I. Further, Local Bankruptcy Rule ("LBR") 2016-1(c)(1) provides that "each professional person employed in the case *must* file a final fee application" (emphasis added). A statement within the Plan that professional fees will be paid does not qualify as a fee application within the meaning of LBR 2016-1(c)(1).

Debtor requests that she be authorized to deliver the Property to the Buyers "free and clear of any tenancy," pursuant to § 542(a). Sale Motion at 17. The Sale Motion does not specify whether the Property is occupied or whether the Debtor anticipates any difficulties delivering the Property to the Buyers free of any occupants. Absent further information, the Court declines to enter an order requiring turnover of the Property by any occupants. The Debtor may seek turnover by way of a separately noticed motion.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid shall be \$670,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Party Information

Debtor(s):

Deborah Earle

Represented By

Anthony Obehi Egbase
Crystle Jane Lindsey

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10:00 AM

CONT... Deborah Earle

Chapter 7

Edie Walters
W. Sloan Youkstetter

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 23, 2019

Hearing Room 1568

11:00 AM

2:18-20013 David Russell Clough

Chapter 7

#100.00 Hearing
RE: [15] Motion to Convert Case From Chapter 7 to 13

fr. 12-4-18; 3-19-19; 5-21-19

Docket 15

***** VACATED *** REASON: 6/24/2019 Notice of withdrawal of motion
filed by debtor**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

Trustee(s):

Heide Kurtz (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-19418 TKLB, LLC

Chapter 7

#1.00 APPLICANT: ROSENDO GONZALEZ, Trustee

Hearing re [61] and [62] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/23/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$6,840.15

Total Expenses: \$170.74

State of California: \$2,649.10

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

TKLB, LLC

Represented By

Michael I Gottfried

Amelia Puertas-Samara

Trustee(s):

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... TKLB, LLC
Rosendo Gonzalez (TR)

Represented By
David Seror
Jessica L Bagdanov

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-19418 TKLB, LLC

Chapter 7

#2.00 APPLICANT: SLBIGGS, A Division of Singerlewak, Accountant

Hearing re [61] and [62] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/23/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,494

Expenses: \$309.38

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

TKLB, LLC

Represented By
Michael I Gottfried
Amelia Puertas-Samara

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... TKLB, LLC

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
David Seror
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-19418 TKLB, LLC

Chapter 7

#3.00 OTHER: STATE OF CALIFORNIA BANKRUPTCY

Hearing re [61] and [62] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/23/2019

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

TKLB, LLC

Represented By
Michael I Gottfried
Amelia Puertas-Samara

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
David Seror
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-19418 TKLB, LLC

Chapter 7

#4.00 APPLICANT: DAVID SEROR, Attorney for Trustee

Hearing re [61] and [62] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/23/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$20,574.50

Expenses: \$800.74

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

TKLB, LLC

Represented By
Michael I Gottfried
Amelia Puertas-Samara

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... TKLB, LLC

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
David Seror
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#5.00 APPLICANT: BRAD D. KRASNOFF, Trustee

Hearing re [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,676.50

Total Expenses: \$140.53

U.S. Bankruptcy Court: \$350.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Eric P Israel

Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#6.00 APPLICANT: DANNING, GILL DIAMOND & KOLLITZ LLP, Attorney for Trustee
Hearing re [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$186,389.50 approved, which includes \$176,405 in previously approved interim fees [*See* Doc. No. 51] and current fees of \$9,984.50, but remaining payment shall be limited to \$38,999.22 per Trustee's request [*See* Doc. No. 62].

Expenses: \$15,611.92 approved, which includes \$15,391.14 in previously approved interim expenses [*See* Doc. No. 51] and current expenses of \$220.78.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#7.00 APPLICANT: MENCHACA & COMPANY LLP, Accountant for Trustee

Hearing re [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$17,698 approved, which includes \$11,774 in previously approved interim fees [See Doc. No. 50] and current fees of \$5,924, but remaining payment shall be limited to \$5,147.05 per Trustee's request [See Doc. No. 62].

Expenses: \$25.65 approved on a final basis

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Eric P Israel

Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#8.00 Charges: United States Bankruptcy Court

Hearing re [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 HearingRE: [2633] Motion to Assume Lease or Executory Contract Debtors' Notice of Motion and Motion to Assume and Assign Promissory Note Pursuant to 11 U.S.C. Section 365(a); Memorandum of Points and Authorities in Support Thereof

Docket 2633

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Assume and Assign Promissory Note Pursuant to 11 U.S.C. § 365(a) [Doc. No. 2633] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2632 and 2633 [Doc. No. 2702]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion to Assume and Assign Promissory Note Pursuant to 11 U.S.C. § 365(a) [Doc. No. 2703]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. Debtors move for an order authorizing Debtor Verity Medical Foundation ("VMF") to assume and assign a Forgivable Promissory Note (defined below) to John Lee, M.D. and Leonard Sender, M.D., Inc., dba Chan Soon-Shiong Institutes for Medicine Immuno-Oncology Network, Mariposa ("CSSI").

VMF contracts with physicians and other healthcare professionals to provide healthcare services. VMF held or holds long-term professional service agreements with various medical groups, including Verity Medical Group, P.C. ("VMG"). Chaitali Nangia, M.D. ("Dr. Nangia") was employed by VMG. On October 13, 2017,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... **Verity Health System of California, Inc.**

Chapter 11

Dr. Nangia signed a promissory note, in the principal sum of \$300,000, in favor of VMF (the “Forgivable Promissory Note”). The Forgivable Promissory Note was provided in connection with a physician employment agreement between Dr. Nangia and VMG. Pursuant to the Forgivable Promissory Note, Dr. Nangia received \$300,000, to be used to purchase a primary residence. The Forgivable Promissory Note was to be forgiven over time as long as Dr. Nangia continued to practice at VMF clinics. As of the date of the Motion, the Forgivable Promissory Note has an outstanding balance of \$225,000.

As part of the winding up of VMF, VMG and Dr. Nangia have mutually terminated their employment relationship and Dr. Nangia has transitioned her practice to CSSI. Debtors argue that the purpose of the Forgivable Promissory Note—providing an economic incentive for Dr. Nangia to remain in the community providing medical care—would be best achieved through an assumption and assignment of the Forgivable Promissory Note to CSSI. Dr. Nangia and CSSI have consented to the assignment.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court “need engage in only a cursory review” of the debtor's decision, and “should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.” *Id.*

A contract is executory if the obligations of both parties “are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.” *Unsecured Creditors' Comm. v. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co., Inc.)*, 139 F.3d 702, 705 (9th Cir. 1998).

The Court finds that the Forgivable Promissory Note is an executory contract. Both parties to the contract have material obligations that have not been performed.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... **Verity Health System of California, Inc.**

Chapter 11

Dr. Nangia must continue to provide medical services to obtain forgiveness of the remaining balance. VMF (and assignee CSSI) are required to forgive the remaining balance provided that Dr. Nangia continues to provide medical services. **[Note 1]**

The Court approves the assumption and assignment of the Forgivable Promissory Note to CSSI. **[Note 2]** In view of the closure of the VMF clinics and absent Dr. Nangia's continued employment by VMG, the estate has no need of the Forgivable Promissory Note. Assignment of the Forgivable Promissory Note will relieve the Debtors of further costs associated with administering the Forgivable Promissory Note.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Courts have held that a "note is not usually an executory contract if the only performance that remains is repayment." *Pennsylvania Tire Co. v. Firestone (In re Pennsylvania Tire Co.)*, 26 B.R. 663, 674 (Bankr. N.D. Ohio 1982). The remaining unperformed obligations under the Forgivable Promissory Note extend beyond repayment. Dr. Nangia must continue to provide medical services to trigger forgiveness of the remaining balance.

Note 2

The assignment of the Forgivable Promissory Note is appropriate pursuant to § 363(b)(1), which authorizes the Debtors to use estate property other than in the ordinary course of business upon Court approval.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare and Medi-Cal Provider Agreements.

fr, 6-5-19; 7-10-19

Docket 0

***** VACATED *** REASON: CONTINUED 8-20-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 HearingRE: [2654] Motion Debtors' Notice and Motion for an Order Approving, *Nunc Pro Tunc* To July 1, 2019, Certain Accommodations Requested by Old Republic Insurance Company In Connection With the Renewal of the Debtors' Workers' Compensation Insurance Policy; Declaration of Richard G. Adcock in Support Thereof

Docket 2654

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Motions are GRANTED in their entirety.

Pleadings Filed and Reviewed:

- 1) Motion for Approval of Accommodations Requested by Old Republic Insurance Company:
 - a) Debtors' Notice of Motion and Motion for an Order Approving, *Nunc Pro Tunc* to July 1, 2019, Certain Accommodations Requested by Old Republic Insurance Company in Connection with Renewal of the Debtors' Workers' Compensation Insurance Policy [Doc. No. 2654]
 - i) Submission of Signature Page of Richard G. Adcock [Doc. No. 2728]
 - ii) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2653 and 2654 [Doc. No. 2701]
 - b) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for an Order Approving, *Nunc Pro Tunc* to July 1, 2019, Certain Accommodations Requested by Old Republic Insurance Company in Connection with Renewal of the Debtors' Workers' Compensation Insurance Policy [Doc. No. 2726]
 - c) No opposition to the Motion is on file
- 2) Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd.:
 - a) Supplemental Insurance Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd. [Doc. No. 2672]
 - i) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2665, 2669, 2670, 2671, 2672 and 2673 [Doc. No. 2700]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... **Verity Health System of California, Inc.** Chapter 11

- b) Official Committee of Unsecured Creditors' Response to the Debtors' Supplemental Insurance Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd. [Doc. No. 2725]
- c) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Motion for Approval of Accommodations Requested by Old Republic Insurance Company

Debtors move for an order, *nunc pro tunc* to July 1, 2019, authorizing the Debtors to agree to certain accommodations requested by Old Republic Insurance Company ("Old Republic") in connection with the renewal of a workers' compensation and employer's liability insurance policy provided by Old Republic to certain of the Debtors (the "Workers' Compensation Policy").

Current coverage under the Workers' Compensation Policy expired on July 1, 2019. The Debtors sought proposals for workers' compensation insurance from twenty-two carriers. Twenty-one of those carriers declined. The only carrier agreeing to provide insurance, the California Compensation Insurance Fund, demanded a premium of \$16,238,980. The annual premium under the renewed Workers' Compensation Policy offered by Old Republic (the "Renewed Workers' Compensation Policy") is \$1,311,970. The premium for the Renewed Workers' Compensation Policy is 33% higher than the premium under the existing policy. Old Republic has also required the Debtors to provide Old Republic with a replacement Letter of Credit whereby the amount of the Letter of Credit is increased by \$4,253,638 to \$38,340,934 (the "Replacement Letter of Credit").

Old Republic has conditioned its willingness to offer the Renewed Workers' Compensation Policy upon the entry of an order providing old Republic with the following (collectively, the "Accommodations"):

- 1) The Debtors shall assume all obligations to Old Republic under prior agreements.

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Los Angeles
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10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

- 2) The automatic stay shall not prohibit Old Republic from cancelling the Renewed Workers' Compensation Policy pursuant to the terms of the policy and/or the terms of any other agreements between the Debtors and Old Republic.
- 3) All collateral held by Old Republic posted by the Debtors, whether posted before or after the filing of the Debtors' bankruptcy petitions, shall secure all obligations of the Debtors to Old Republic no matter when they arise.
- 4) The reimbursement obligations and any other obligations arising under the agreements between Old Republic and the Debtors shall be administrative obligations entitled to priority under § 503(b), and shall be deemed actual and necessary expenses of the estates to be paid in the ordinary course of business.
- 5) The Debtors' rights against all collateral held by Old Republic, in whatever form, shall be governed by the terms of the agreements between Old Republic and the Debtors, and the Debtors shall not take any action against Old Republic in their bankruptcy cases inconsistent with the terms of those agreements, including without limitation actions for turnover or estimation.
- 6) Old Republic shall not draw on the Replacement Letter of Credit based upon the Debtors' insolvency or bankruptcy. The terms of the existing *Stipulation for Entry of Order Resolving Adversary Proceeding between the Debtors and Old Republic Insurance Company* [Doc. No. 24, Adv. No. 2:18-ap-01277-ER] shall remain in effect.

The Official Committee of Unsecured Creditors does not objection to the Motion. No opposition to the Motion is on file.

Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd.

To secure the Replacement Letter of Credit required by Old Republic in connection with the issuance of the Renewed Workers' Compensation Policy, the Debtors seek authorization to make a capital contribution to their wholly-owned captive insurer, Marillac Insurance Company, Ltd. ("Marillac"). Marillac is not a debtor. The contribution is necessary so that Marillac will have sufficient collateral to obtain the Replacement Letter of Credit.

The existing Letter of Credit is fully secured by Marillac assets—\$34,087,296 of liquid securities. Under the terms of the Renewed Workers' Compensation Policy, the amount of the Replacement Letter of Credit has been increased by \$4,253,638 to

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Los Angeles
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

\$38,340,934. In order for the Replacement Letter of Credit to be fully secured, it is necessary for the Debtors to make a capital contribution to Marillac in the amount of \$4,253,638.

Shortly after the Petition Date, the Court entered an order authorizing the Debtors to continue to administer insurance coverage currently in effect and pay insurance premiums and other costs necessary to maintain coverage. *See* Doc. No. 131 (the "Insurance Order").

II. Findings and Conclusions

A. The Motion for Approval of Accommodations Requested by Old Republic Insurance Company is Granted

Section 363(b) permits the debtor to use estate property out of the ordinary course of business, subject to Court approval. The debtor must articulate a business justification for the use of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.*

The Debtors have demonstrated ample business justification for providing the Accommodations to Old Republic. As employers and operators of a non-profit healthcare system in California, the Debtors are required to maintain workers' compensation insurance coverage. *See* Cal. Lab. Code § 3700. The Renewed Workers' Compensation Policy offered by Old Republic is the most economical means of obtaining such coverage. The only other entity willing to extend coverage to the Debtors required a premium of \$16,238,980, much higher than the \$1,311,970 premium required by Old Republic. The Accommodations required by Old Republic are reasonable in view of the coverage being extended.

Based upon the foregoing, the Motion is GRANTED in its entirety.

B. Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd. is Granted

To secure the Replacement Letter of Credit required by Old Republic under the Renewed Workers' Compensation Policy, it is necessary for the Debtors to make a \$4,253,638 capital contribution to Marillac. Given the favorable terms of the Renewed Workers' Compensation Policy, the Debtors have demonstrated sufficient business justification for making the capital contribution. The Motion is GRANTED in its entirety.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

C. Conclusion

Based upon the foregoing, the Motion for Approval of Accommodations Requested by Old Republic Insurance Company and the Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd. are both GRANTED in their entirety. The Debtors shall submit orders incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 24, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 HearingRE: [2644] Motion to Approve Compromise Under Rule 9019 Debtors' Notice and Motion to Approve Compromise Between Debtors and Smith & Nephew, Inc., Pursuant to Federal Rule of Bankruptcy Procedure 9019; Declaration of Richard G. Adcock in Support Thereof

Docket 2644

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve Compromise Between Debtors and Smith & Nephew, Inc., Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 2644] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2634, 2637, 2641, 2642, 2643, 2644, 2647 and 2648 [Doc. No. 2699]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Notice of Motion and Motion to Approve Compromise Between Debtors and Smith & Nephew, Inc., Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 2704]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. The Debtors seek approval of a settlement agreement with Smith & Nephew, Inc. (the "Settlement Agreement").

On October 9, 2018, the Court entered a *Final Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition*

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Obligations to Critical Vendors [Doc. No. 436] (the “Critical Vendor Order”). The Critical Vendor Order authorizes the Debtors to pay prepetition claims of vendors supplying critical medical supplies and services, in an aggregate amount of up to \$20 million.

Smith & Nephew, Inc. (“S&N”) is a critical vendor of the Debtors, pursuant to a Vendor Agreement executed on October 5, 2018 and subsequently extended to February 5, 2019.

On March 17, 2017, O’Connor Hospital (“O’Connor”) and S&N executed a *NAVIO Pricing Agreement* (the “NAVIO Agreement”), pursuant to which S&N placed a NAVIO surgical system (the “NAVIO Equipment”) at O’Connor. The Debtors maintain that they own the NAVIO Equipment pursuant to the NAVIO Agreement. S&N disagrees and asserts it owns the NAVIO Equipment.

On December 27, 2018, the Court approved the sale of substantially all of O’Connor’s assets to Santa Clara County. Doc. No. 1153. On January 15, 2019, the Debtors and S&N entered into a stipulation which provided that the NAVIO Equipment was not being sold along with the other assets of O’Connor to Santa Clara County, and that the parties retained all rights, claims, defenses, and arguments with respect to the ownership and possession of the NAVIO Equipment.

The Settlement Agreement resolves the dispute concerning ownership of the NAVIO Equipment and allows S&N to remove the NAVIO Equipment from O’Connor as consideration to agreeing to further extend the Vendor Agreement through December 31, 2019. S&N has also agreed to reduced its general unsecured claim against O’Connor by \$391,000, the cost of the NAVIO Equipment, subject to an inspection of the system and verification that the system is in good working order and condition. If the NAVIO Equipment is not in good working order, the parties agree to negotiate in good faith toward a reduced claim reflecting the equipment’s damaged condition.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay

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necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits and Complexity of the Litigation

These factors weigh in favor of approving the Settlement Agreement. The Debtors no longer use the NAVIO Equipment. Santa Clara County did not purchase the NAVIO Equipment when it acquired substantially all of O'Connor's assets. The Settlement Agreement benefits the estates by (1) providing for the disposition of the unnecessary NAVIO Equipment in exchange for S&N agreeing to reduce its unsecured claim against the Debtors by the cost of the NAVIO Equipment and (2) providing for an extension of the Vendor Agreement with S&N through December 31, 2019.

The possibility that litigation regarding the ownership of the NAVIO Equipment might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off. Further, if the Debtors elected litigation, S&N might cease providing services as a Critical Vendor, further damaging the estates.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Committee does not object to the Settlement Agreement, and no creditors have objected to the Settlement Agreement.

Difficulties to be Encountered in the Matter of Collection

This factor does not apply.

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III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

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#13.00 HearingRE: [2670] Motion to Approve Compromise Under Rule 9019 Debtors' Notice and Motion for Approval of Compromise With the County of Los Angeles Department of Mental Health Pursuant to Federal Rule of Bankruptcy Procedure 9019 Nunc Pro Tunc; Declaration of Anita Chou In Support Thereof

Docket 2670

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Approval of Compromise with the County of Los Angeles Department of Mental Health Pursuant to Federal Rule of Bankruptcy Procedure 9019 *Nunc Pro Tunc* [Doc. No. 2670] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2665, 2669, 2670, 2671, 2672 and 2673 [Doc. No. 2700]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Approval of Compromise with the County of Los Angeles Department of Mental Health Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 2705]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. The Debtors seek approval of a *Department of Mental Health Legal Entity Agreement* (the "Settlement Agreement") between St. Francis Medical Center ("St. Francis") and the County of Los Angeles Department of Mental Health (the "County").

Prior to the Petition Date, St. Francis provided specialty mental health services to Medi-Cal beneficiaries and/or Healthy Families enrollees (the "Services") pursuant to

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an agreement with the County (the "Contract"). St. Francis was entitled to reimbursement from federal, state, and County sources on account of the Services under the terms of the Contract. The State of California (the "State") conducted an audit of the Services provided by St. Francis during the 2008–2009 fiscal year (the "Reimbursement Period") to determine the final amounts to which St. Francis was entitled during the Reimbursement Period (the "Audit"). The State concluded in the Audit that the amounts earned by St. Francis during the Reimbursement Period exceeded reimbursement limits under the Contract. At the request of St. Francis, the County appealed the results of the Audit (the "Appeal"). During the pendency of the Appeal, the County approached St. Francis and requested that it enter into the Settlement Agreement. The Settlement Agreement modifies the Contract by increasing the reimbursement cap for the Services, which will allow St. Francis to recover an additional \$215,590 in reimbursements for performing the Services. Under the Settlement Agreement, St. Francis authorizes the County to withdraw the Appeal.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits and Complexity of the Litigation

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These factors weighs in favor of approving the Settlement Agreement. The Settlement Agreement achieves the aim of the Appeal without the need for further delay or litigation risk by modifying the Contract to allow for an additional \$215,590 in reimbursements from federal and state sources. The Settlement Agreement is far preferable to continuing with the Appeal, as it allows the estates to immediately receive all the benefits that would be obtained from successful prosecution of the Appeal.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Committee does not object to the Settlement Agreement, and no creditors have objected to the Settlement Agreement.

Difficulties to be Encountered in the Matter of Collection

This factor does not apply.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron

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Chapter 11

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 HearingRE: [2672] Motion Supplemental Insurance Motion for Authorization to Make Capital Contribution to Marillac Insurance Company, Ltd.; Memorandum of Points and Authorities and Declaration of Richard G. Adcock in Support Thereof [Related Docket Nos. 24, 131]

Docket 2672

Tentative Ruling:

7/23/2019

See Cal. No. 11, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Chapter 11

#15.00 Hearing re [1572] and [1858] and [2145] Cure Objection Asserted by
UnitedHealthcare Insurance Company

fr. 4-17-19; 6-5-19; 7-10-19

Docket 1858

Tentative Ruling:

7/23/2019

No appearances required. The Court has been advised that the parties intend to stipulate to continue this hearing. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

UnitedHealthcare Insurance

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing

RE: [2637] Motion to Extend Time / Notice of Motion And Third Motion For Entry of An Order Pursuant To § 365(D)(4) of The Bankruptcy Code Extending The Time To Assume or Reject Unexpired Leases of Nonresidential Real Property; Declaration of Richard Adcock In Support Thereof

fr. 7-23-19

Docket 2637

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Motion is GRANTED and the Assumption/Rejection Deadline is extended to and including September 25, 2019.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Third Motion for Entry of an Order Pursuant to § 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 2637] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2634, 2637, 2641, 2642, 2643, 2644, 2647 and 2648 [Doc. No. 2699]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Entry of an Order Pursuant to §365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 2691]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the

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Debtors' Chapter 11 cases. Doc. No. 17.

Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors' business, including office and operational space (the "Leases"). On February 19, 2019, the Court extended the Debtors' deadline to assume or reject these unexpired leases (such deadline, the "Assumption/Rejection Deadline") by 90 days, to and including March 29, 2019. Doc. No. 1579. On May 15, 2019, the Court further extended the Assumption/Rejection Deadline to and including June 27, 2019. Doc. No. 2383. Debtors now move for a 90-day extension of the Assumption/Rejection Deadline, to and including September 25, 2019. Debtors state that an extension is necessary because Strategic Global Management ("SGM"), the purchaser of the Debtors' remaining hospitals, has not made a determination regarding the assumption or rejection of the Leases.

The Official Committee of Unsecured Creditors has no objection to the Motion. No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(d)(4) provides:

- (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—
 - (i) the date that is 120 days after the date of the order for relief; or
 - (ii) the date of the entry of an order confirming a plan.
- (B)
 - (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
 - (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

"[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made."
Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.), 88

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B.R. 231, 237 (B.A.P. 9th Cir. 1988), aff'd, 875 F.2d 1380 (9th Cir. 1989).

In its prior ruling extending the Assumption/Rejection deadline to June 27, 2019, the Court deemed a Lessor's non-opposition to constitute "consent" for purposes of § 365(d)(4)(B)(ii). *See* Doc. No. 2247. The Court finds it appropriate to continue to deem the Lessor's non-opposition to constitute consent. Because the Debtors remain current on lease payments, this approach does not prejudice the Lessors. In addition, absent extension of the deadline, the Debtors will lack the ability to assume and assign any of the leases at issue to SGM. This would require SGM to renegotiate the leases, making it more difficult for SGM to consummate the purchase of the Debtors' remaining hospitals.

The Lessors have received notice of the Motion and have not objected to the relief requested. The Assumption/Rejection Deadline is extended to and including September 25, 2019.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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Nicholas A Koffroth

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11:00 AM

2:09-33882 Julian Joseph Buck and Irma Buck

Chapter 7

#100.00 APPLICANT: TRUSTEE: DAVID A. GILL

Hearing re [134] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees [Current Trustee, Diane C. Weil]: \$3,995.44

Total Expenses [Current Trustee, Diane C. Weil]: \$174.18

Total Fees [Former Trustee, David A. Gill]: \$14,465.56

Total Expenses [Former Trustee, David A. Gill]: \$433.77

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Julian Joseph Buck

Represented By
William Radcliffe
Larry D Simons

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

Joint Debtor(s):

Irma Buck

Represented By
William Radcliffe
Larry D Simons

Trustee(s):

Diane C Weil (TR)

Represented By
Eric P Israel

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Chapter 7

#101.00 APPLICANT: TRUSTEE: DIANE C. WEIL

Hearing re [134] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

See Cal. No. 100, incorporated in full by reference.

Party Information

Debtor(s):

Julian Joseph Buck

Represented By
William Radcliffe
Larry D Simons

Joint Debtor(s):

Irma Buck

Represented By
William Radcliffe
Larry D Simons

Trustee(s):

Diane C Weil (TR)

Represented By
Eric P Israel

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Chapter 7

#102.00 APPLICANT: DANNING GILL DIAMOND & KOLLITZ LLP

Hearing re [134] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

For the reasons set forth below, the Application is GRANTED IN-PART and DENIED IN-PART.

Pleadings Filed and Reviewed

1. Third and Final Application for Compensation and Reimbursement of Expenses by Danning, Gill, Diamond & Kollitz, LLP as Former General Counsel to Predecessor Chapter 7 Trustee and Successor Chapter 7 Trustee [Doc. No. 131] (the "Application")
 - a. Declaration of David A. Gill in Support of Application
2. Trustee's Final Report [Doc. No. 133]
3. Debtors' Opposition to Third & Final Application for Compensation and Reimbursement of Expenses by Danning, Gill, Diamond & Kollitz, LLP as Former General Counsel to Predecessor Chapter 7 Trustee and Successor Chapter 7 Trustee [Doc. No. 137] (the "Opposition")
4. Reply Memorandum of Points and Authorities of Danning, Gill, Diamond & Kollitz, LLP in Support of Third and Final Application for Compensation and Reimbursement of Expenses [Doc. No. 138] (the "Reply")
5. Declaration of Diane C. Weil, Successor Chapter 7 Trustee Regarding Third and Final Application for Compensation and Reimbursement of Expenses by Danning Gill, Diamond & Kollitz, LLP as Former General Counsel to Predecessor Chapter 7 Trustee and Successor Chapter 7 Trustee [Doc. No. 139] (the "Weil Declaration")
6. Response of Danning, Gill, Diamond & Kollitz, LLP to Successor Trustee's "Declaration in Response to Application for Compensation and Reimbursement of Expenses"; Request to Strike Late-Filed Opposition [Doc. No. 140] (the

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CONT... **Julian Joseph Buck and Irma Buck**
"Supplemental Reply")

Chapter 7

I. Facts and Summary of Pleadings

Danning, Gill, Diamond & Kollitz, LLP ("Applicant"), former general bankruptcy counsel to former Chapter 7 Trustee, David A. Gill (the "Former Trustee"), and successor Chapter 7 Trustee, Diane C. Weil (the "Trustee"), applies for final allowance of fees \$13,328.50 and costs of \$496.86 for the period of December 1, 2016 though February 4, 2019 (the "Current Fee Period") as well as final approval of previously approved interim fees totaling \$30,209.50 and costs totaling \$832.74 (the "Application"). *See* Doc. Nos. 70, 74, 98, 108.

Julian & Irma Buck (the "Debtors") oppose the Application. They argue that they have standing to object because this is a surplus case and identify the following objectionable time entries from the Current Fee Period totaling \$4,795.50 that they contend are unreasonable or improper:

- 1) 1/3/17: (0.7) by E. Israel for "Edit and Execute Motion for Authority to Make Interim Distributions to Creditors" \$455
- 2) 1/3/17: (0.2) by E. Israel for "Edit and Execute Notice of Hearing on Trustee's Motion for Authority to Make Distributions to Unsecured Creditors" \$130
- 3) 6/12/17: (0.1) by M. D'Alba for "Prepare Report re Status for Office of the United States Trustee" \$48
- 4) 12/23/16: (0.8) by E. Israel for "Edit Firm's Second Interim Fee Application" \$504
- 5) 1/3/17: (0.7) by E. Israel for "Edit and Execute Firm's Second Interim Fee Application" \$455
- 6) 1/31/18: (0.3) by M. D'Alba for "Exchange Memos with Attorney J. Goodrich re Switching Payee on Farmers Insurance Checks" \$153 *Alleged Trustee Function*
- 7) 2/16/18: (0.3) by M. D'Alba for "Prepare Memo to J. Harrison re Issuance of Commission Payments" \$153 *Alleged Trustee Function*
- 8) 7/13/18: (0.4) by M. D'Alba for "Review Status of Buck Insurance Commission Issues" \$204 *Vague as to Nature of Issues*
- 9) 8/28/18: (0.1) by E. Israel for "Review Notice of Debtors' Change of Address" \$67
- 10) 11/1/18: (1.3) by J. Tedford for "Draft Transition Memo" \$812.50

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Julian Joseph Buck and Irma Buck

Chapter 7

- 11) 11/5/18 (0.1) by E. Israel for "Conference with J.N. Tedford re: Transition Memo" \$67
- 12) 11/5/18 (0.1) by J. Tedford for "Conference with E.P. Israel re: Transitions Memo" \$67
- 13) 11/5/18 (0.1) by J. Tedford for "Review and Revise Transition Memo" \$62.50
- 14) 1/25/18 (0.2) by E. Israel for "Edit Successor Trustee's Application to Continue Employment of Firm" \$134
- 15) 1/26/18 (0.1) by E. Israel for "Edit Application and Notice for Successor Trustee to Employ General Counsel" \$67
- 16) 1/16/19: (1.7) by V. Radocay for "Review and Revise Third and Final Fee Application" \$425
- 17) 1/18/19: (1.3) by E. Israel for "Review and Execute Final Fee Application (Estimate)" \$871
- 18) 1/23/19: (0.5) by V. Radocay for "Review and Revise Third and Final Fee Application (Estimate)" \$125

The Debtors state that the main asset of the Estate was the Debtor's renewal commissions and that from the outset of Applicant's employment the Debtors had expressed their willingness to pay all claims in full. In support of this, the Debtors highlight that they, and not Applicant, successfully reduced claims by approximately 38% by filing claim objections. Therefore, the Debtors argue that the objectionable time entries are not reasonable because they either did not require any special skill requiring a senior partner to undertake such task or the task did not benefit the Estate given the Debtors commitment to pay all claims in full. As noted above, the Debtors also object to certain entries on the basis that the services identified represent functions that the Trustee should have performed.

Applicant filed a timely Reply responding to the Debtors' identified objections. Applicant generally argues that the Debtors have failed to submit any evidence in support of the Opposition and that notwithstanding the Debtors' alleged good intentions to pay all claims in full, the reality in chapter 7 cases is that debtor's good intentions often fall short. Accordingly, Applicant counters that the Debtors' expressed intentions did not obviate the need for it to perform services on behalf of the Former Trustee and Trustee.

With respect to the Debtors' specific objections, Applicant responds as follows:

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Wednesday, July 24, 2019

Hearing Room 1568

11:00 AM

CONT...

Julian Joseph Buck and Irma Buck

Chapter 7

- **Work Performed By Senior Partner [Entries 1, 2, 4, 5, 9, 14, 15 & 17 above]:** Applicant's policy is to staff all cases with a partner to oversee associate's work and provide guidance regarding case strategy. Accordingly, partners must review pleadings and periodically meet with associates. Mr. Israel rendered only approximately 23.6% of the time billed during the Current Fee Period, which Applicant submits is reasonable. Even if the Court concludes that Mr. Israel should not have billed for certain services, fees for those services should not be denied in their entirety, but instead the rates should be reduced by \$170/hour (the difference between the partner and associate rates). Therefore, at most, Applicant submits that its fees should only be reduced by a total of \$714 for these entries.
- **Transition Memo (Entries 10-13 above):** Applicant argues that the four entries the Debtors highlight with respect to its preparation of a transition memo were reasonable because they were performed at the request of the Trustee.
- **Entry 3 above:** Applicant states that Debtors failed to explain why this entry should be disallowed. The Trustee is required to prepare a status report for the U.S. Trustee annually and it is common practice for the Trustee to ask Applicant to provide the portion of the status report that identifies the status of legal projects. The (0.1) time spent for this is modest for this task.
- **Alleged Trustee Function (Entries 6-7 above):** Applicant states that these entries were for Mr. D'Alba's services in responding to communications from attorneys at Farmers Insurance Company, that both entries were initiated by the insurance company, and it would have been inappropriate to "hand off" the calls.
- **Vague as to Nature of Issues (Entry 8 above):** Applicant states that this entry is reasonable when it is viewed in relation to the other time entries surrounding it and not viewed in a vacuum. Applicant provides an explanation as to what this entry represents.
- **Entries 16 & 18 above:** Applicant states that these two entries were performed by Applicant's paralegal and highlights that the Debtors have not provided any explanation as to why these entries are unreasonable. Applicant states that its paralegals have the lowest billing rates at the firm and that it routinely has its paralegals draft the bulk of its fee applications to keep costs low.

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

Finally, Applicant states that to the extent the Debtors seek to challenge any of their fees previously approved on an interim basis, such a challenge should be overruled because the Debtors did not raise any prior objections to its fees and have not now identified any specific unreasonable fees. Therefore, Applicant requests the Court overrule the entirety of the Debtors' objections and approve its fees.

On July 18, 2019, the Trustee filed an untimely declaration highlighting that she did not execute the declaration filed in support of the Application. The Trustee offers no explanation or excuse for the untimely filing. Although not outright stating so, the Trustee appears to object to the amount of fees Applicant billed over the course of this case in connection with preparation of three fee applications. The Trustee states that after making a voluntary reduction of \$2,000 for fees in that category, Applicants fees still represent just over 20% of Applicant's total fees. The Trustee does not identify any specific time entries that she believes are unreasonable or provide any guidance as to what amount of fees she believes would be reasonable. [Note 1]

On July 19, 2019, Applicant filed a response to the Weil Declaration highlighting how untimely the filing was and requesting that the Court strike the pleading in its entirety. Applicant also argues that there is nothing in the bankruptcy rules or U.S. Trustee Guidelines that caps fees for a particular category of services and the Bankruptcy Code authorizes the submission of interim fees. Applicant also asserts that the estate benefited by Applicant's submission of interim fee applications because payment of professional fees created tax deductions that reduced administrative income taxes and minimizing bank fees. Applicant also highlights that the Former Trustee who served as the trustee for approximately 8.5 of the 10-year life of this case signed off on Applicant's final fees. Finally, Applicant submits that its fees are reasonable in view of the services performed.

II. Findings of Fact and Conclusions of Law

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all

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relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

The Court overrules the Trustee's objection. The Weil Declaration was submitted eight days late and the Court does not find the objection particularly helpful since it does not identify any specific entries that the Trustee believes are objectionable or include any authority to support the Trustee's contention that Applicant's fees are excessive. Moreover, the Court finds that Applicant's fees are relatively low considering that this case is nearing its tenth year. When viewed within the context of the facts of this case, and considering the fact that Applicant prepared and submitted three separate fee applications and has already voluntarily reduced its fees by \$2,000, the Court is not persuaded to find that Applicant's fees for time spent preparing fee applications and related activities are unreasonable.

With respect to the Debtors' Opposition, the Court rules as follows:

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

- **Work Performed By Senior Partner [Entries 1, 2, 4, 5, 9, 14, 15 & 17 above]:**
 - OVERRULE objections to entries 1, 2, 4, 5, 14, 15, & 17. The Court is not persuaded that Applicant's fees were unreasonable.
 - SUSTAIN objection to entry 9 on the grounds that this entry should have been billed at an associate rate. Therefore, Applicant's fees are reduced from \$67 for this entry to \$48 [Note 2], for a total fee reduction of \$19.
- **Transition Memo (Entries 10-13 above):**
 - OVERRULE objections. These fees were incurred at the request of the Trustee and the Trustee has not raised any specific objection to the fees. Furthermore, given the length of this case and the importance of providing accurate and comprehensive information to the Trustee, the Court finds these fees reasonable.
- **Entry 3 above:**
 - OVERRULE objection. The Debtors have not identified any basis to support a finding that this entry is unreasonable.
- **Alleged Trustee Function (Entries 6-7 above):**
 - OVERRULE objections. Applicant has provided a sufficient explanation to conclude that these fees are reasonable.
- **Vague as to Nature of Issues (Entry 8 above):**
 - OVERRULE objection. Applicant has provided a sufficient explanation to conclude that this fee is reasonable.
- **Entries 16 & 18 above:**
 - OVERRULE objections. The Debtors have not identified any basis to support a finding that these entries are unreasonable.

III. Conclusion

For the reasons set forth above, the Application is GRANTED IN-PART and DENIED IN-PART. Applicant's fees are APPROVED on a final basis, as follows:

Fees for Current Fee Period: \$13,309.50 [Note 3]
Fees for Prior Fee Periods: \$30,209.50
Total Fees: \$43,519

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

Expenses for Current Fee Period: \$496.86
Expenses for Prior Fee Periods: \$832.74
Total Expenses: \$1,329.60

Applicant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court also notes that, despite her apparent refusal to sign the declaration in support of the Application, the Trustee's Final Report does not propose any reduced payment for Applicant's fees [*See* Doc. No. 133].

Note 2: \$480/hr rate of M. D'Alba x (0.1) = \$48

Note 3: \$13,328.50 - \$19 = \$13,309.50

Party Information

Debtor(s):

Julian Joseph Buck

Represented By
William Radcliffe
Larry D Simons

Joint Debtor(s):

Irma Buck

Represented By
William Radcliffe
Larry D Simons

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

Trustee(s):

Diane C Weil (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
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Wednesday, July 24, 2019

Hearing Room 1568

11:00 AM

2:09-33882 Julian Joseph Buck and Irma Buck

Chapter 7

#103.00 APPLICANT: MENCHACA & COMPANY LLP

Hearing re [134] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$13,202

Expenses: \$252.75

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Julian Joseph Buck

Represented By
William Radcliffe
Larry D Simons

Joint Debtor(s):

Irma Buck

Represented By

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Hearing Room 1568

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CONT... Julian Joseph Buck and Irma Buck

Chapter 7

William Radcliffe
Larry D Simons

Trustee(s):

Diane C Weil (TR)

Represented By
Eric P Israel

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Wednesday, July 24, 2019

Hearing Room 1568

11:00 AM

2:18-23337 Lidia Maria Raya and Wiliiam Garcia Raya, Sr.

Chapter 7

#104.00 APPLICANT: ELISSA D MILLER, Trustee

Hearing re [33] and [36] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/23/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,546.96

Total Expenses: \$23.75

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Lidia Maria Raya

Represented By
Lane K Bogard

Joint Debtor(s):

William Garcia Raya Sr.

Represented By
Lane K Bogard

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CONT... Lidia Maria Raya and Wiliam Garcia Raya, Sr.

Chapter 7

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 24, 2019

Hearing Room 1568

11:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

#105.00 Hearing
RE: [23] Motion to set aside RE: Default "Notice Of Motion And Motion To Set
Aside Default; Memorandum Of Points And Authorities; Declaration(s) And
Exhibit(s) In Support Thereof"

Docket 23

***** VACATED *** REASON: CONTINUED 8-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul A Carrasco

Represented By
Raymond H. Aver

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#1.00 Trial Date Set

RE: [10] Amended Complaint by Christian T Kim on behalf of Sam S. Leslie, Sam S Leslie (TR) against Leon Reihanian. (RE: related document(s)1 Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) filed by Plaintiff Sam S. Leslie). (Kim, Christian)

Docket 10

*** VACATED *** REASON: cont'd to 3/23/2020 at 9 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Abraham Reihanian, as Trustee of

Pro Se

DOES 1-20, inclusive

Pro Se

Leon Reihanian

Represented By
Raymond H. Aver

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim

**United States Bankruptcy Court
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9:00 AM

CONT... Sharp Edge Enterprises

James A Dumas Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#2.00 Trial RE: [12] Amended Complaint by Michael N Berke on behalf of Joseph Amin against Kami Emein.

fr: 6-24-19

Docket 0

***** VACATED *** REASON: CONTINUED TO 9-30-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Represented By
Michael J Conway

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01273 Menchaca Chapter 7 Trustee v. Olivares et al

#3.00 Trial Date Set

RE: [3] Adversary case 2:18-ap-01273. Amended Complaint by John Menchaca Chapter 7 Trustee against Johanna Olivares. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)),(72 (Injunctive relief - other)),(91 (Declaratory judgment))(Avery, Wesley)

Docket 1

***** VACATED *** REASON: CLOSED ON 3-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

DOES 1-20

Pro Se

Johanna Olivares

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

CONT...

Felix Anibal Diaz

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01274 Menchaca Chapter 7 Trustee v. Diaz et al

#4.00 Trial

RE: [2] Amended Complaint by Wesley H Avery on behalf of John Menchaca Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:18-ap-01274. Complaint by John Menchaca Chapter 7 Trustee against Felix Anibal Diaz, Cecilia Giron Diaz. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) filed by Plaintiff John Menchaca Chapter 7 Trustee). (Avery, Wesley)

Docket 2

***** VACATED *** REASON: CLOSED ON 3-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Cecilia Giron Diaz

Pro Se

Felix Anibal Diaz

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

CONT...

Felix Anibal Diaz

Chapter 7

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Los Angeles
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01276 LeClair v. United States Of America (Treasury Department, Int

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01276. Complaint by Jeremy Wyatt LeClair against United States Of America (Treasury Department, Internal Revenue Service Division) . (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)). Adversary transferred-in from Western District of North Carolina (Charlotte) and Adversary Proceeding #: 18-03043 to Central District of California (Los Angeles). (Ly, Lynn) Additional attachment(s) added on 8/30/2018 (Ly, Lynn). Additional attachment(s) added on 8/30/2018 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 12-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

United States Of America (Treasury

Pro Se

Plaintiff(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

9:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01277 Verity Health System of California, Inc. v. Old Republic Insurance Company

#6.00 Trial Date Set RE: [2] Amended Complaint Amended Only to Include Complete Pages to Complaint by Tania M Moyron on behalf of Verity Health System of California, Inc. against City National Bank, Old Republic Insurance Company.

Docket 0

***** VACATED *** REASON: DISMISSED 11-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

Defendant(s):

City National Bank

Pro Se

Old Republic Insurance Company

Pro Se

Plaintiff(s):

Verity Health System of California,

Represented By
Tania M Moyron
Samuel R Maizel

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10:00 AM

2:19-15046 Marlene Ramos-Nuno and Jose Guadalupe Nuno-

Chapter 7

#100.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Chevrolet Pickup .

Docket 14

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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Central District of California
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Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... Marlene Ramos-Nuno and Jose Guadalupe Nuno- Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marlene Ramos-Nuno

Represented By
Michael H Colmenares

Joint Debtor(s):

Jose Guadalupe Nuno-Ruvalcaba

Represented By
Michael H Colmenares

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:19-15519 Charmene Marjorie Vega

Chapter 7

#101.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3757 East Avenue T-4, Palmdale, CA 93550 . (Jafarnia, Merdaud)

Docket 12

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$410,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$512,123.21. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 29, 2019

Hearing Room 1568

10:00 AM

CONT... Charmene Marjorie Vega

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Charmene Marjorie Vega

Represented By
Barry E Borowitz

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:19-15738 Juan Valdez, Jr.

Chapter 7

#102.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 618 Alta Vista Drive, Glendale, CA 91205 . (Smith, Nathan)

Docket 15

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the trustee and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The Court has reviewed the Debtor's Response [Doc. No. 17], in which the Debtor states that he has no knowledge or interest in the subject property and was not involved in any scheme to delay, hinder or defraud creditors.

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Nicole Currey in support of Motion at paragraph 18.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move

**United States Bankruptcy Court
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10:00 AM

CONT...

Juan Valdez, Jr.

Chapter 7

for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Juan Valdez Jr.

Represented By
Michael Salanick

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#103.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19

Docket 2558

***** VACATED *** REASON: CONTINUED 8-5-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#104.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19

Docket 2557

***** VACATED *** REASON: CONTINUED 8-5-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#105.00 HearingRE: [2504] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Federico Fuentes; Irene Fuentes and Does 1 thru 10; Docket no. 19STCV08306, Superior Court of California, County of Los Angeles .

Docket 2504

Tentative Ruling:

7/25/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Francis Medical Center and Federico Fuentes and Irene Fuentes Granting Motion for Relief from the Automatic Stay* [Doc. No. 2722] (the "Stipulation") is APPROVED. Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:19-17358 Jose Romero

Chapter 7

#106.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA CIVIC, VIN: 2HGF C1E5 2HH7 05483 .

Docket 8

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

CONT... Jose Romero

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Romero

Represented By
Arsen Pogosov

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:19-17438 Zaleka Shelet Turner

Chapter 7

#107.00 Hearing

RE: [11] and [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 18660 Villa Clara St., Rowland Heights, CA 91748 With Proof of Service.

Docket 11

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on June 3, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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Hearing Room 1568

10:00 AM

CONT...

Zaleka Shelet Turner

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Zaleka Shelet Turner

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

2:19-15101 Christopher Joe Aragon

Chapter 7

#108.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Chevrolet Cruze, VIN# 1G1BE5SM9J7111493 .

Docket 8

Tentative Ruling:

7/25/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Monday, July 29, 2019

Hearing Room 1568

10:00 AM

CONT... Christopher Joe Aragon

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Christopher Joe Aragon

Represented By
John B Holtz

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#1.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18; 1-28-19; 4-1-19

Docket 10

***** VACATED *** REASON: Cont'd to 10/7/2019 at 10:00am**

Tentative Ruling:

3/27/2019

No appearances required. The tentative ruling is to take this matter off calendar. This is a continued hearing on Wells Fargo Bank, N.A.'s ("Movant") *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* [Doc. No. 10] (the "R/S Motion"). The chapter 7 Trustee, Jason M. Rund (the "Trustee") filed a timely opposition [Doc. No. 15]. This matter has been continued a number of times to afford the Trustee an opportunity to sell the real property that is the subject of the R/S Motion. To avoid unnecessary administrative costs of keeping this motion on calendar, the matter shall be taken off calendar. If the Trustee has not obtained approval of a sale of the subject property by August 31, 2019, Movant may re-notice a hearing on the R/S Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
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Los Angeles
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

9/20/2018

For the reasons stated below, the tentative ruling is to DENY the R/S Motion without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 10]
2. Trustee's Opposition to R/S Motion ("Trustee's Opposition") [Doc. No. 15]
3. As of the preparation of this tentative ruling, Movant has not filed a reply.

I. Facts and Summary of Pleadings

Motion

Rogelio and Carol Gonzalez (together, the "Debtors") filed this voluntary joint chapter 7 case on July 16, 2018. On August 30, 2018, creditor Wells Fargo Bank, N.A. ("Movant") filed a "Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 10] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property"). Movant asserts that cause exists to grant it relief from stay under § 362(d)(1) because the Debtors filed a Statement of Intention that indicates the Debtors' intent to surrender the Property ("Statement of Intention"). *See* Motion, Exhibit 8.

Movant also asserts that cause exists to grant it relief from stay under § 362(d)(2) because the Debtors have no equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case. In support, Movant states that the total debt on the Property is \$591,518.92 which is comprised of Movant's first priority deed of trust secured by a lien in the amount of \$248,386.30 and approximately fifteen other liens securing an approximate indebtedness of \$351,518.92. *See* Request for Judicial Notice, Doc No. 10, PDF p. 15. After factoring in 8% costs of sale (\$49,384.64), Movant contends that the total debt exceeds the Property's \$617,308 fair market value.

Opposition

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

CONT...

Rogelio Gonzalez and Carol Gonzalez

Chapter 7

On September 10, 2018, the chapter 7 trustee filed an Opposition to the R/S Motion [Doc. No. 15] ("Trustee's Opposition"). The Trustee requests that the Court deny the R/S Motion as follows. First, the Trustee contends that Movant has not established sufficient cause for relief from stay under § 362(d)(1) because (i) Movant is adequately protected by an equity cushion of \$368,921.71 or 149%; and (ii) Debtors' Statement of Intention has no bearing on whether to grant Movant relief from stay because the Property is subject to administration by the Trustee pursuant to § 541.

Second, the Trustee contends that the Court should not grant Movant relief from stay pursuant to § 362(d)(2) because, using Movant's figures and assuming all the alleged liens are legitimate, the Debtors have approximately \$17,402.78 in equity in the Property. [NOTE 1] Additionally, the Trustee states that he is currently evaluating the validity of the other asserted liens on the Property and requests an opportunity to try to negotiate with those creditors for a consensual sale that might provide some benefit to the estate or pursue a sale free and clear of some or all those interests.

Reply

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based on Movant's figures, the Court finds that Movant is adequately protected by a 149% equity cushion.

The Court also finds that the Trustee has the better argument with respect to Debtors' Statement of Intention.

Based on the foregoing, the Court finds that Movant is not entitled to relief from stay under § 362(d)(1).

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Since this is a chapter 7 case, it is undisputed that the Property is not necessary for an effective reorganization. Therefore, the Court must only determine whether the Debtors enjoy any equity in the Property. Using Movant's figures and deducting costs of sale, Debtors' \$100,000 homestead exemption, the Trustee's fees, and administrative claims, it appears unlikely that the Trustee will be able to administer the Property for the benefit of general unsecured creditors.

However, none of the purported junior lienholder filed a response to this R/S Motion. On balance, the Court is persuaded that it is premature to find that there is no equity in the Property given the relatively newness of this case and the lack of meaningful investigation by the Trustee into the validity of the junior liens.

III. Conclusion

The tentative ruling is to DENY the R/S Motion without prejudice.

The Trustee shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

NOTE 1: This figure represents the total equity in the Property prior to deducting any costs of sale or taking into consideration Debtors' \$100,000 homestead exemption.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

#2.00 Hearing
RE: [58] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Ford Explorer; VIN: 1FM5K8GT7FGC05888 . (Wang, Jennifer)

fr: 7-2-19

Docket 58

Tentative Ruling:

8/1/2019

This is a continued hearing on Ford Motor Credit Company LLC's ("Movant") motion for relief from the automatic stay under 11 U.S.C. § 362 with respect to a 2015 Ford Explorer (the "Vehicle"). In advance of the initial July 2, 2019 hearing, the Court posted a tentative ruling indicating its intention to grant the motion pursuant to § 362(d)(2). Notwithstanding the Debtor's failure to file an opposition to the R/S Motion, the Debtor appeared at the hearing, through counsel, and requested a continuance to this date. The Court granted the Debtor's request and directed the Debtor to give notice. As of the preparation of this tentative ruling, the Debtor has not filed a notice of continuance or status report updating the Court on the status of any negotiations between the Debtor and Movant. Moreover, the Court has reviewed Movant's Supplemental Declaration [Doc. No. 61], in which Movant again requests that the Court grant it stay relief.

Based on the foregoing, the Motion is GRANTED pursuant to 11 U.S.C. § 362(d) (2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

CONT...

Paul A. Carrasco

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:19-15519 Charmene Marjorie Vega

Chapter 7

#3.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3737 East Avenue T-4, Palmdale, CA 93550 . (Singer, Daniel)

Docket 15

Tentative Ruling:

8/1/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the debtor stated an intention to surrender the property to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
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10:00 AM

CONT... Charmene Marjorie Vega

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Charmene Marjorie Vega

Represented By
Barry E Borowitz

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc. and Jason Michael

Chapter 11

#4.00 HearingRE: [2689] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Employment Termination. (Nalbandyan, Akop)

Docket 2689

Tentative Ruling:

8/1/2019

For the reasons set forth below, the First Motion (defined below) is GRANTED, but stay relief shall not take effect until September 30, 2019. The Second Motion (defined below) is DENIED without prejudice.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2689] (the "First Motion")
 - a) Notice of Errata to Jason Shank's Motion for Relief from Automatic Stay [Doc. No. 2799] (the "Notice of Errata")
 - b) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2800] (the "Second Motion")
- 2) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) filed by Jason Shank [Doc. No. 2746]
- 3) Official Committee of Unsecured Creditors' Response to Second Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Jason Shank [Doc. No. 2827]
- 4) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Jason Shank [Doc. No. 2748]
- 5) Debtors' Response to Second Motion for Relief from the Automatic Stay Filed on Behalf of Jason Shank [Doc. No. 2822]
- 6) Notice of Withdrawal of Motion for Relief from the Automatic Stay [Doc. No. 2839]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under

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CONT... Verity Health System of California, Inc. and Jason Michael Chapter 11

Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Jason Shank ("Movant") seeks stay relief, pursuant to § 362(d)(1), so that Movant may commence an action for wrongful termination against the Debtors. *See* Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2689] (the "First Motion"). Movant initially stated that he sought recovery only from applicable insurance and waived any deficiency claim against the estates. The Debtors and the Official Committee of Unsecured Creditors (the "Committee") filed responses indicating that they did not oppose the First Motion in view of Movant's agreement to limit his recovery to insurance. The Debtors requested that stay relief not take effect until September 30, 2019, to enable them to focus upon completing the sale of their four remaining hospitals.

After the Debtors and the Committee responded to the First Motion, Movant filed a *Notice of Errata to Jason Shank's Motion for Relief from Automatic Stay* [Doc. No. 2799] (the "Notice of Errata") and a *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* [Doc. No. 2800] (the "Second Motion"). The Notice of Errata provides in relevant part:

To the extent that the Debtor has an insurance policy that will provide coverage for his wrongful termination claims, [Movant] will pursue relief under said policy. In the event that the insurance carrier does not provide coverage for damages resulting from [Movant's] wrongful termination claims, declines to extend coverage, or there is no insurance coverage, a separate motion for leave will be filed.

[Movant] is concurrently filing a corrected Motion for Relief that corrects this mistake and makes no other changes.

Notice of Errata at 2.

The declaration in support of the Second Motion provides in relevant part: "Movant has been informed of potential coverage for Movant's claims under Debtor's EPLI insurance policy; however, at this time Debtor has not made its information known to Movant." Turner Decl. at ¶ 6c.

The Second Motion is inconsistent as to whether Movant waives any deficiency claim against the estates. The declaration filed in support of the Second Motion states that Movant *does* waive any deficiency claim against the estates. However, the Second

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CONT... Verity Health System of California, Inc. and Jason Michael Chapter 11

Motion itself states that Movant *does not* waive any deficiency claim against the estates.

Debtors filed an opposition to the Second Motion, asserting that the Second Motion should be denied for the following reasons:

- 1) The Second Motion was filed without the required notice.
- 2) Movant should be bound by the declaration filed in support of the First Motion, which stated that he would seek recovery only from applicable insurance.

The Committee filed an opposition to the Second Motion. The Committee opposes stay relief to the extent that Movant seeks to assert a deficiency claim, on the ground that granting such relief could negatively impact the estates.

II. Findings and Conclusions

At the outset, the Court notes that on August 1, 2019, Movant filed a notice purporting to voluntarily dismiss both the First and Second Motions. Local Bankruptcy Rule 9013-1(k) provides that the voluntary dismissal of a motion is subject to Bankruptcy Rule 7041(a). Under Bankruptcy Rule 7041(a), where parties have responded to a motion, the motion may be voluntarily dismissed only upon a stipulation of dismissal signed by all parties who have responded. Here, the Debtors and the Committee have responded to both the First and Second Motions and have not stipulated to the voluntary dismissal of either Motion. Consequently, Movant's purported notice of withdrawal is ineffective. The Motions shall remain on calendar.

Turning to the merits, in contrast to the First Motion, the Second Motion does not provide that Movant will waive any deficiency claim against the estates. Non-bankruptcy litigation in which recovery is limited to applicable insurance has far less an effect upon the administration of the estate than litigation in which recovery is not so limited. In determining whether to lift the stay, the most salient factor considered by the Court is the effect of the non-bankruptcy litigation on the administration of the estate. *See In re Curtis*, 40 B.R. 795, 806 (Bankr. D. Utah 1984) ("The most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Because it seeks stay relief without limiting recovery to applicable insurance, the Second Motion

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differs materially from the First Motion; the Second Motion cannot be fairly construed as an inconsequential amendment to the First Motion. Consequently, the Court will treat the First and Second Motions separately.

A. The First Motion is Granted, But Relief from Stay Shall Not Take Effect Until September 30, 2019

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

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CONT... Verity Health System of California, Inc. and Jason Michael Chapter 11

- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

As noted above, the most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court held that “[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit.” *Id.*

Granting stay relief at this time would interfere with the administration of the estate by distracting the Debtors’ professionals from completing the sale of their four remaining hospitals. To enable the Debtors to retain their focus upon completing the sale, the Court will grant stay relief, but such relief shall not take effect until September 30, 2019. This result gives the Debtors some breathing space to achieve their objectives, while at the same time delaying Movant’s ability to proceed with the non-bankruptcy litigation by only approximately two months.

Absent further order of the Court, Movant may seek recovery only against applicable insurance and may not assert a deficiency claim against the estates. Movant’s request that the order be binding and effective in any future bankruptcy case, no matter who the debtor may be without further notice, is denied.

B. The Second Motion is Denied Without Prejudice

Local Bankruptcy Rule 9013-1(d)(2) requires at least 21 days’ notice of motions seeking relief from the automatic stay. The Second Motion was filed on July 25, 2019, only eleven days prior to the hearing. Because notice of the Second Motion was insufficient, it is DENIED without prejudice. Movant may refile the Second Motion on regular notice in the event that Movant seeks to assert a deficiency claim against the estates. The Debtors’ request that Movant be bound by his initial representation that he would seek recovery only from applicable insurance is DENIED.

III. Conclusion

Based upon the foregoing, the First Motion is GRANTED, but stay relief shall not take effect until September 30, 2019. The Second Motion is DENIED without prejudice.

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CONT... Verity Health System of California, Inc. and Jason Michael Chapter 11

Within seven days of the hearing, Movant shall submit orders on the First and Second Motions. The orders shall incorporate this tentative ruling by reference. [Note 1]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movant's proposed orders as to form, Movant shall either (a) submit a *Notice of Lodgment* of the proposed orders in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed orders pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19

Docket 2557

***** VACATED *** REASON: Cont'd to 8/14/19 at 10a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19

Docket 2558

***** VACATED *** REASON: Cont'd to 8/14/19 at 10a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

**United States Bankruptcy Court
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.10 HearingRE: [2800] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Employment Termination. (Nalbandyan, Akop)

Docket 2800

Tentative Ruling:

8/1/2019

See Cal. No. 4, below, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Los Angeles
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:19-18261 Edgar Roberto Calderon and Erika Sanchez

Chapter 7

#7.00 Hearing
RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8513 Vicki Dr., Whittier, CA 90606

Docket 7

Tentative Ruling:

8/1/2019

For the reasons set forth herein, CONTINUE HEARING to **August 19, 2019 at 10:00 a.m.** The Motion was not served on the Debtor by posting or personal service as required by Judge Robles's self-calendaring procedures for residential unlawful detainer actions filed on less than 21 days' notice.

By no later than August 7, 2019, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Notice on all interested parties, including on the Debtor and Debtor's attorney via first class mail; and (iii) file a proof of service evidencing compliance with this ruling. Failure to timely comply with any of the foregoing will result in denial of the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Edgar Roberto Calderon

Represented By
Harriet L. Goldfarb

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10:00 AM

CONT... Edgar Roberto Calderon and Erika Sanchez

Chapter 7

Joint Debtor(s):

Erika Sanchez

Represented By
Harriet L. Goldfarb

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, August 5, 2019

Hearing Room 1568

10:00 AM

2:19-17982 Kimber Marie Kabel

Chapter 7

#8.00 Hearing

RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 10809 Wellworth Avenue, Los Angeles, CA 90024 .

fr. 7-22-19

Docket 7

Tentative Ruling:

8/1/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures [*see* Doc. Nos. 10 & 11]. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on March 6, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy

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CONT...

Kimber Marie Kabel

Chapter 7

case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

7/19/2019

Tentative Ruling:

For the reasons set forth herein, CONTINUE HEARING to **August 5, 2019 at 10:00 a.m.** The proof of service [Doc. No. 7] does not reflect that the Motion was served on the Debtor, individually, via posting or personal service, as required by Judge Robles' self-calendaring procedures for Residential Unlawful Detainer Actions brought on shortened notice. *See also* Local Bankruptcy Rules 4001-1(c)(1)(C)(i) and 9013-1(d)(1) (requiring service on both the Debtor and the Debtor's attorney).

By no later than **July 24, 2019**, Movant is directed to take the following actions:

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CONT... Kimber Marie Kabel

Chapter 7

(i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Motion and Notice on the Debtor by posting or personal service; and (iii) file a proof of service evidencing compliance with this ruling. Failure to timely comply with any of the foregoing will result in denial of the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kimber Marie Kabel

Represented By
Norma Duenas

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 6, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

#1.00 Hearing
RE: [23] Motion to set aside RE: Default "Notice Of Motion And Motion To Set
Aside Default; Memorandum Of Points And Authorities; Declaration(s) And
Exhibit(s) In Support Thereof"

FR. 7-24-19

Docket 23

Tentative Ruling:

8/5/2019

For the reasons set forth below, the Motion to Set Aside Default is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Set Aside Default [Doc. No. 23] (the "Motion")
- 2) No opposition to the Motion is on file

I. Summary of Pleadings

Merchants Acquisition Group, LLC ("Plaintiff") filed this dischargeability action against Paul A. Carrasco (the "Defendant") on March 25, 2019. The Clerk of the Court entered Defendant's default on May 2, 2019. On June 26, 2019, the Court ordered Plaintiff to file a Motion for Default Judgment. Plaintiff's Motion for Default Judgment is set for hearing on August 13, 2019.

Defendant moves to set aside the default. No opposition to the Motion is on file. Defendant has retained counsel and has attached a proposed Answer to the Motion.

II. Findings and Conclusions

Civil Rule 55(c) provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d

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CONT...

Paul A. Carrasco

Chapter 7

922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

As explained below, none of the factors apply. Accordingly, the Motion is granted and Defendant's default is vacated.

1. Vacating the Defaults Would Not Prejudice the Plaintiff

Merely being required to litigate the merits of a claim does not qualify as prejudice to the Plaintiff. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001). However, a financial loss occasioned by the delay resulting from being required to litigate can establish prejudice. *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1109 n.2 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000).

Vacating the default does not prejudice the Plaintiff. Defendant's default was entered on May 2, 2019. Defendant moved to set aside the default on July 3, 2019. The minor delay resulting from Defendant's failure to timely respond to the Complaint has not resulted in substantial prejudice to the Plaintiff.

2. The Default Was Not the Result of Culpable Conduct

"[A] defendant's conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007).

Here, Defendant's failure to respond to the Complaint was not devious or in bad faith. Defendant did not respond to the Complaint because he did not have sufficient income to retain counsel. Upon obtaining a job and earning sufficient income to retain counsel, Defendant moved to set aside the default. Defendant's default was not the result of culpable conduct.

3. Defendant May Have a Meritorious Defense

"A defendant seeking to vacate a default judgment must present specific facts that

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CONT... Paul A. Carrasco

Chapter 7

would constitute a defense.... But the burden on a party seeking to vacate a default judgment is not extraordinarily heavy." *TCI Grp.*, 244 F.3d at 700. "All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense: the question whether the factual allegation [i]s true is not to be determined by the court when it decides the motion to set aside the default." *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1094 (9th Cir. 2010) (internal citations omitted).

Here, Defendant disputes the Complaint's dischargeability allegations, contending that he always intended to repay the indebtedness at issue. Defendant has pointed to facts that, if true, would constitute a meritorious defense.

4. Litigation Deadlines

In view of Defendant's default, the Court previously vacated the litigation deadlines governing this action. Good cause appearing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The following litigation deadlines shall apply:
 - a) Defendant shall file the Answer attached to the Motion by no later than **8/09/2019**.
 - b) A Status Conference shall be held on **10/15/2019**. A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
 - c) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - d) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - e) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - f) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - g) The last day for dispositive motions to be heard is **4/21/2020**. (If the

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motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

- h) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- i) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- j) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

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- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(j)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(j)(ii), and shall be filed by the deadline specified in ¶(1)(j)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

Plaintiff's Motion for Default Judgment, currently set for hearing on August 13, 2019, is denied as moot and taken off calendar.

III. Conclusion

Based upon the foregoing, the Motion to Set Aside Default is GRANTED. Plaintiff's Motion for Default Judgment, currently set for hearing on August 13, 2019, is denied as moot and taken off calendar. The Court will prepare and enter a Scheduling Order and an order denying Plaintiff's Motion for Default Judgment. Defendant shall submit an order granting the Motion to Set Aside Default.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

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Defendant(s):

Paul A Carrasco

Represented By
Raymond H. Aver

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-20281 Ronelio Garcia

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#100.00 APPLICANT: Trustee - Elissa D. Miller

Hearing re [91] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/5/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$7,030.02

Total Expenses: \$160.50

International Sureties, LTD: \$31.11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ronelio Garcia

Represented By
Dennis E McGoldrick

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Trustee(s):

Elissa Miller (TR)

Pro Se

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#101.00 Bond Payments - International Sureties, LTD

Hearing re [91] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/5/2019

See Cal. No. 100, incorporated in full by reference.

Party Information

Debtor(s):

Ronelio Garcia

Represented By
Dennis E McGoldrick

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:18-20281 Ronelio Garcia

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#102.00 APPLICANT: Accountant for Trustee Expenses (Other Firm) - Grobstein Teeple, LLP

Hearing re [91] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/5/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,340.50

Expenses: \$45.42

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ronelio Garcia

Represented By
Dennis E McGoldrick

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:18-22889 Martin Carlos Lopez

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#103.00 HearingRE: [30] Motion to Approve Compromise Under Rule 9019 Between Trustee and Debtor re Debtor's Property (6211 Templeton Street, Huntington Park, CA 90255) (Dye (TR), Carolyn)

Docket 30

Tentative Ruling:

8/5/2019

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Trustee's Motion for an Order Approving Settlement and Release Between Trustee and Debtor Re Debtor's Property (6211 Templeton Street, Huntington Park, CA 90255) [Doc. No. 30] (the "Motion")
 - a) Notice of Trustee's Motion for an Order Approving Settlement and Release Between Trustee and Debtor Re Debtor's Property (6211 Templeton Street, Huntington Park, CA 90255) [Doc. No. 31]
- 2) Limited Objection of the Federal National Mortgage Association to the Trustee's Motion for an Order Approving Settlement and Release Between Trustee and Debtor Re Debtor's Property [Doc. No. 33]

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of a *Conditional Settlement Agreement and Mutual Release* (the "Settlement Agreement") with Carlos Lopez (the "Debtor"), pertaining to real property located at 6211 Templeton Street, Huntington Park, CA 90255 (the "Property"). The Federal National Mortgage Association ("Fannie Mae") opposes the Motion.

The Court's Disapproval of the Proposed Cash Collateral Stipulation Between the Debtor and Fannie Mae

Debtor filed a voluntary Chapter 7 petition on November 1, 2018. Debtor did not disclose an interest in the Property. On June 25, 2019, the Court disapproved, without

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prejudice, a cash collateral stipulation between the Debtor and Fannie Mae, because the Trustee was not a party to the stipulation:

Absent the consent of the Trustee, the Debtor lacks authority to continue to operate property of the estate. *See* § 721 (providing that the Court "may authorize the *trustee* to operate the business of the debtor for a limited period ...") (emphasis added). Nothing on the docket indicates that the Trustee has authorized the Debtor to continue to manage the Property or continue to collect rental income from the Property. The Court declines to approve a Stipulation sanctioning the Debtor's unauthorized activities.

Further, the Debtor lacks authority to enter into stipulations with respect to the use of cash collateral. The Stipulation treats the Debtor as though he were a debtor-in-possession acting as a fiduciary to creditors in a Chapter 11 case, rather than a Chapter 7 Debtor whose non-exempt assets are subject to administration by the Trustee. It is the responsibility of the Trustee to make decisions with respect to the use of estate property, including the use of cash collateral. *See, e.g.*, § 363(b)(1) (authorizing the Trustee to use property of the estate). The Court cannot approve a Stipulation which allows the Debtor to usurp the Trustee's responsibilities.

Order Disapproving Without Prejudice "Stipulation Between Federal National Mortgage Association and Debtor for Adequate Protection and Authorization to Use Cash Collateral Under 11 U.S.C. § 363 on an Interim Basis" [Doc. No. 28] (the "Order Disapproving Cash Collateral Stipulation").

Summary of the Settlement Agreement and Fannie Mae's Opposition Thereto

As noted above, Debtor did not schedule any interest in the Property. The Debtor asserts that he holds only bare legal title to the Property and that his parents hold an equitable interest in the Property. The Trustee disputes that contention, based on the fact that the Debtor is the borrower on the mortgage encumbering the Property, has collected rents on the Property, and has claimed interest expense deductions in connection with the Property's mortgage on his tax return.

The material terms of the Settlement Agreement are as follows:

- 1) The Debtor shall pay the estate the total sum of all allowed unsecured claims plus the amount required to pay administrative expenses (the

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"Settlement Amount") in exchange for the estate's release of any claim to the Property.

- 2) Upon execution of the Settlement Agreement, the Debtor shall tender to the Trustee a good faith payment of \$50,000. Any remaining balance owed shall be paid on the later of (a) 30 days after the claims bar date or (b) the date any claims objections are resolved by a final order.

The Trustee states that the Debtor has tendered the \$50,000 good faith payment required by the Settlement Agreement.

Fannie Mae asserts a security interest in the Property's rents. Fannie Mae objects to the Settlement Agreement to the extent that the funds tendered by the Debtor in connection with the Settlement Payment constitute its cash collateral. Fannie Mae asserts that the Court should require the Debtor and/or the Trustee to submit evidence establishing that the Settlement Payment is not made from funds constituting Fannie Mae's cash collateral. In the alternative, Fannie Mae argues that the court should require the Debtor to provide adequate protection of its interests pursuant to §§ 361 and 363.

The Trustee has not filed a reply to Fannie Mae's opposition.

II. Findings and Conclusions

A. Fannie Mae's Opposition to the Settlement Agreement is Overruled

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Trustee "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. *See* §§ 363(c)(2)(B) and (e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

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Fannie Mae's opposition presumes that the Property's rental income constitutes its cash collateral. That presumption would not be controversial if the Property were property of the estate. *See* § 363(a) (defining "cash collateral" as "cash ... in which the estate and an entity other than the estate have an interest ...") (emphasis added). However, the Debtor disputes that the Property is property of the estate. As set forth in the Settlement Agreement, the Debtor contends that "while he is listed as an owner [of the Property] and has taken deductions for mortgage interest in his tax returns, ownership to the [Property] is actually with his parents and that his parents have paid all expenses, including the acquisition costs, and put him on title solely for family reasons." Settlement Agreement at ¶ C. The Settlement Agreement further provides that "[p]ending receipt of the full settlement amount, Trustee agrees to forebear prosecution of any adversary complaint to determine the ownership of the Templeton Property and/or any action to dispute the ownership of the Property and will cooperate in any refinancing necessary to make the payment due hereunder." Settlement Agreement at ¶ 4.

Because it has not been established that the Property is property of the estate, it has not been established that rental income generated by the Property is Fannie Mae's cash collateral. In fact, the purpose of the Settlement Agreement is to enable the Trustee to avoid the expense of attempting to establish that the Property is property of the estate. The Settlement Agreement provides that upon receipt of the Settlement Amount, the Trustee will release the estate's claim to the Property. Settlement Agreement at ¶ 3a.

Since it has not been established that the Property's rental income constitutes Fannie Mae's cash collateral, the Court declines to require the Debtor and/or the Trustee to submit evidence establishing that the Settlement Amount will not be paid from the Property's rental income. Fannie Mae's opposition to the Settlement Agreement is **OVERRULED**.

B. The Settlement Agreement is Approved

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C*

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Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The dispute over ownership of the Property is fact-intensive and would be expensive and time consuming for the Trustee to litigate.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Paramount Interests of Creditors

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement will generate funds sufficient to pay (a) unsecured creditors who have filed allowed claims in full and (b) the expenses of administering the estate. The only entity opposing approval of the Settlement Agreement is Fannie Mae. However, as noted above, Fannie Mae's opposition is predicated upon the assumption that the Property is property of the estate, a fact that has not been established.

Difficulties to be Encountered in the Matter of Collection

This factor weighs in favor of approving the Settlement Agreement. Absent approval of the Settlement Agreement, the Trustee would be required to commence litigation to establish the estate's ownership of the Property and would then be required to file a motion to sell the Property. The Settlement Agreement allows the

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Trustee to avoid these expense and time-consuming steps.

III. Conclusion

Based upon the foregoing, Fannie Mae's opposition is OVERRULED and the Settlement Agreement is APPROVED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Martin Carlos Lopez

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:16-26414 Ma Elena Vanegas

Chapter 7

#1.00 APPLICANT: TRUSTEE: Carolyn A. Dye

Hearing re [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/6/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,250

Total Expenses: \$125.56

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ma Elena Vanegas

Represented By
Julie J Villalobos

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:16-26414 Ma Elena Vanegas

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#2.00 APPLICANT: Accountant: LEA ACCOUNTANCY LLP

Hearing re [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/6/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,986

Expenses: \$121.40

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ma Elena Vanegas

Represented By
Julie J Villalobos

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

- #3.00 Show Cause Hearing**
RE: [1] Order Requiring Plaintiff To Appear And Show Cause Why This Action Should Not Be Dismissed For Failure To Prosecute

Docket 1

Tentative Ruling:

8/6/2019

For the reasons set forth below, the Order to Show Cause is DISCHARGED.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute [Doc. No. 26] (the "Order to Show Cause")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 29]
- 2) Plaintiff's Response to Order to Show Cause for Dismissal [Doc. No. 31]
- 3) (In Chambers) Order Reopening Action in Light of Lifting of Automatic Stay in Bankruptcy Court [Doc. No. 20, Case No. 2:18-cv-01760-CJC-JC]

I. Facts and Summary of Pleadings

On March 1, 2018, Maground, GmbH ("Plaintiff") commenced a complaint against Roberto Kai Hegeler (the "Debtor/Defendant") in the United States District Court for the Central District of California (the "District Court"), asserting claims for trademark infringement pursuant to 15 U.S.C. §§1114 and 1125(a), trademark dilution pursuant to 15 U.S.C. §1125(c), unfair competition and false advertising pursuant to 15 U.S.C. §1125(a), cybersquatting pursuant to 15 U.S.C. §1125(d), common law trademark infringement, breach of contract, conversion, and violations of Cal. Bus. & Prof. Code §§14247, 17200, and 17500 (the "District Court Action"). *See* Maground, GmbH v. Roberto Kai Hegeler and Maground, LLC (Doc. No. 1, Case No. 2:18-cv-01760-CJC-JC). On April 23, 2018, Debtor/Defendant filed a voluntary Chapter 7 petition. On May 4, 2018, the District Court stayed the District Court Action pending resolution of Debtor/Defendant's bankruptcy proceeding.

On July 23, 2018, Plaintiff commenced an action against Debtor/Defendant in the

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Bankruptcy Court (the "Non-Dischargeability Action"). On December 17, 2018, the Bankruptcy Court entered an order (1) *sua sponte* lifting the automatic stay to permit the District Court Action to proceed and (2) staying the Non-Dischargeability Action until entry of a final, non-appealable judgment in the District Court Action. Doc. No. 19 (the "Stay Order"). The Stay Order provided:

The most efficient way to resolve the Non-Dischargeability Action is for Plaintiff to first prosecute the District Court Action to final judgment. In the event Plaintiff obtains judgment in its favor, Plaintiff may then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is dischargeable. The District Court is better equipped than this Court to determine whether Defendant is indebted to Plaintiff on account of the allegations for trademark infringement, trademark dilution, and cybersquatting, all of which require the application of substantive non-bankruptcy law.

Stay Order at ¶ 3.

On June 11, 2019, the Bankruptcy Court conducted a Status Conference in the Non-Dischargeability Action. The Bankruptcy Court subsequently issued an *Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute* [Doc. No. 26] (the "Order to Show Cause"). The Order to Show Cause was based upon the following:

A review of the docket in the District Court Action indicates that, as of the date of the June 11, 2019 Status Conference, Plaintiff had taken no action to prosecute the District Court Action subsequent to entry of the Stay Order. In addition, Plaintiff has failed to file a Status Report, notwithstanding the Court's entry of an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Status Conference* [Doc. No. 21] warning that the failure to file a Status Report would result in the imposition of sanctions. The Court has clearly advised Plaintiff that it was necessary for Plaintiff to obtain a final judgment in the District Court Action in order to prosecute the instant Non-Dischargeability Action. Plaintiff's failure to diligently prosecute the District Court Action is tantamount to failure to prosecute the Non-Dischargeability Action.

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Order to Show Cause at 3.

Plaintiff filed an untimely response to the Order to Show Cause. **[Note 1]** Plaintiff states that June 12, 2019, it filed a notice in the District Court stating that the automatic stay had been lifted and requesting that the District Court Action be restored to the active calendar.

The Court's review of the District Court's docket indicates that the District Court Action was restored to the District Court's active calendar on August 1, 2019.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Money maker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

Plaintiff failed to prosecute the District Court Action, upon which this action is predicated, for approximately six months. Although that delay inflicted some prejudice upon the Defendant, dismissal would be too harsh a sanction given the strong public policy favoring disposition of cases on their merits. The Court will discharge the Order to Show Cause.

A Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which shall discuss the status of the District Court Action, shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order discharging the Order to Show Cause and an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please**

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first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Plaintiff's response was filed fourteen days late. The response was due by July 17, 2019 but was not filed until July 31, 2019.

Party Information

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Represented By
Michael F Chekian

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness
Michael F Chekian

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 **MERCHANTS ACQUISITION GROUP LLC v. Carrasco**

#4.00 Hearing
RE: [25] Motion for Default Judgment (Snyder, Richard)

Docket 25

***** VACATED *** REASON: CONTINUED 8-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul A Carrasco

Represented By
Raymond H. Aver

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19

Docket 2144

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

**#7.00 Hearing re [1572] and [1858] and [2145] Cure Objection Asserted by
UnitedHealthcare Insurance Company**

fr. 4-17-19; 6-5-19

Docket 1858

***** VACATED *** REASON: Per stipulation signed 7/24/2019**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

UnitedHealthcare Insurance

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1869] Cure Objection Asserted by Experian Health fka Passport Health Communications Inc

fr. 4-17-19; 6-5-19

Docket 1869

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Experian Health fka Passport Health

Represented By

Joseph D Frank

Alan I Nahmias

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19; 6-5-19

Docket 1881

*** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19

Docket 1882

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1933] Cure Objection Asserted by **Angeles IPA A Medical Corporation**

fr. 4-17-19; 6-5-19

Docket 1933

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Angeles IPA A Medical Corporation

Represented By

Mark A Neubauer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19

Docket 1930

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19

Docket 1873

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19

Docket 1949

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19

Docket 1965

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19; 6-5-19

Docket 2058

*** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19

Docket 1954

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19

Docket 1850

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19

Docket 1940

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing
RE: [1932] Motion to Assume Lease or Executory Contract (or REJECT)
(Goldberg, Marshall)

FR. 4-24-19; 6-5-19

Docket 1932

Tentative Ruling:

8/6/2019

Hearing VACATED. The Court has entered an order approving the *Stipulation Resolving Philips Medical Capital Cure Objection* [Doc. No. 2841].

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19

Docket 1849

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19

Docket 1863

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19

Docket 1866

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19

Docket 1857

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19

Docket 1890

***** VACATED *** REASON: Cont'd to 9/4/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#26.00 Hearing
RE: [2567] Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and Declarations (Orantes, Giovanni)

FR. 7-10-19

Docket 2567

Tentative Ruling:

8/6/2019

See Cal. No. 27, below, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#27.00 Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19

Docket 2579

Tentative Ruling:

8/6/2019

No appearances required. This matter is continued pursuant to a stipulation to be filed. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#28.00 Hearing re [1572] Cure Objection Asserted by **Ortho Engineering, Inc.**

fr. 4-17-19; 7-10-19

Docket 2108

***** VACATED *** REASON: Per notice of resolution filed on 7/17/2019**

Tentative Ruling:

7/9/2019

No appearances required. It appears that this counterparty was inadvertently omitted from the *Omnibus Stipulation Continuing Hearing on Objections Re Cure and Other Issues* [Doc. No. 2669]. The hearing on the cure objection asserted by Ortho Engineering, Inc. is CONTINUED to August 7, 2019, at 10:00 a.m., to take place concurrently with the hearings on cure objections asserted by other counterparties. Within seven days, the Debtors shall submit an order setting the continued hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Alcon Vision, LLC

Represented By

Kevin H Morse

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#29.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19; 6-5-19; 7-10-19

Docket 2157

*** VACATED *** REASON: Cont'd to 8/21/2019 at 10:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#30.00 HearingRE: [133] Motion for order confirming chapter 11 plan with Notice of Motion

Docket 133

Tentative Ruling:

8/6/2019

For the reasons set forth below, CONTINUE HEARING to **September 24, 2019**
at **10:00 a.m.**

Pleadings Filed and Reviewed

1. Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 102] (the "Disclosure Statement")
2. Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan")
3. Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 73]
4. Order Granting Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 82]
5. Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 107] (the "JPMorgan Stipulation")
6. Order on Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 109] (the "Order on JPMorgan Stipulation")
7. Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization [Doc. No. 120]
8. Notice of Hearing Re: Plan Confirmation and Plan Related Deadlines [Doc. No. 119]
9. Declaration of Peter Garza Regarding Service of the Solicitation Package [Doc. No. 122]
10. Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 7, 2019

Hearing Room 1568

10:00 AM

CONT... Damu Vusha and Akiba Vusha

Chapter 11

- No. 130] (the "CSMC 2018-RPL8 Trust Stipulation")
11. Order Granting Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 138] (the "Order on CSMC 2018-RPL8 Trust Stipulation")
 12. Notice of Motion and Motion to Confirm Debtors' Chapter 11 Plan of Reorganization [Doc. No. 133] (the "Confirmation Brief")
 13. Plan Ballot Summary [Doc. No. 135]

I. Facts and Summary of Pleadings

Debtors-in-possession, Damu Vusha and Akiba Vusha (the "Debtors"), filed this voluntary Chapter 11 case on February 5, 2018 (the "Petition Date"). The Debtors' primary assets consist of three real properties: (1) their principal residence located at 6122 S. Kings Road, Los Angeles, CA 90056 (the "Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and 1300 W. 69th Street, Los Angeles, CA 90044 (the "69th Street Property"). The Debtors also own and operate a residential care facility called Jatkodd Crisis Intervention Center (the "Business") which provides 24/7 care to four developmentally disabled individuals. The Business operates out of the Wilton Property and pays the Debtors monthly rent. The Debtors state that post-petition operations from the Business have been profitable. The Debtors also lease out the 69th Street Property for additional monthly income.

The Debtors now seek confirmation of their Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan"). [**Note 1**]

Summary of the Plan

Administrative Claims

The Debtors anticipate having the following administrative claims as of the Effective Date:

- i. Law Offices of Michael Jay Berger ("Debtors' Counsel"): \$15,000
- ii. Jennifer Min Liu ("Debtors' Accountant"): \$2,000
- iii. Tamar Terzian (the "Patient Care Ombudsman"): \$1,200

The Debtors propose to pay the foregoing administrative claims in full, once

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approved by the Court.

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Priority Tax Claims

The Debtors propose to pay the priority tax claims of the Internal Revenue Service (\$52,185.95) and Franchise Tax Board (\$14,419) the present value of their claims in full within five years of the petition date in accordance with § 507(a)(8) by making equal monthly installments in the amounts set forth in Exhibit C of the Disclosure Statement.

Class 1(A) – Secured Claim of U.S. Bank, National Association – Accepts the Plan

Class 1(A) consists of the secured claim of U.S. Bank, National Association ("US Bank"). US Bank holds a first-priority lien against the Principal Residence, which secures debt in the amount of \$609,000.

On October 25, 2018, the Debtors filed a *Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N.A. and US Bank National Association* [Doc. No. 73] (the "Plan Treatment Stipulation"), which the Court approved by order entered December 6, 2018 [Doc. No. 82]. Pursuant to the Plan Treatment Stipulation the Debtors propose to pay US Bank's claim in full over 228 months with 3% interest by making monthly payments of \$3,507.48. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$580.97.

US Bank's claim is impaired and, pursuant to the Plan Treatment Stipulation, it is deemed to accept the Plan.

Class 1(B) – Secured Claim of J.P. Morgan Acquisition Corp. – Accepts the Plan

Class 1(B) consists of the secured claim of J.P. Morgan Acquisition Corp. ("JP Morgan"). JP Morgan holds a first-priority lien against the Wilton Property, which secures debt in the amount of \$310,833.69 and \$4,078.86 in pre-petition arrears.

On March 12, 2019, JP Morgan filed a *Stipulation Re: Adequate Protection and Treatment of Creditors' Claim Under Debtors' Chapter 11 Plan of Reorganization* [Doc. No. 95] (the "JP Morgan Stipulation"), which the Court approved by order entered on the same date [Doc. No. 98]. Pursuant to the JP Morgan Stipulation, the

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Debtors propose to JP Morgan's claim in full with 5.125% interest by making monthly payments of \$1,563. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$321.56. Finally, the Debtors propose to cure the pre-petition arrears by making six equal monthly installment payments of \$784.33 beginning the first month following confirmation of the Plan.

JP Morgan's claim is impaired, and it voted to accept the Plan.

Class 1(C) – Secured Claim of CSMC 2018-RPL8 Trust – Accepts the Plan

Class 1(C) consists of the secured claim of CSMC 2018-RPL8 Trust ("CSMC"). CSMC holds a first-priority lien against the 69th Street Property, which secures debt in the amount of \$277,258.87 and \$4,723.57 in pre-petition arrears.

On July 3, 2019, the Debtors filed a *Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535* [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation"), which the Court by order entered on July 24, 2019 [Doc. No. 138]. Pursuant to the CSMC 2018-RPL8 Trust Stipulation, the Debtors propose to pay CSMC's claim in full with 3.25% interest by making monthly payments of \$1,060.60. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of approximately \$308.54. Finally, the Debtors agreed to make a one-time payment of \$1,367.15 to CSMC to cure arrears through June 1, 2019.

CSMC's claim is impaired, and it voted to accept the Plan.

Class 1(D) – Secured Claim of Santander Consumer USA – Deemed to Reject

Class 1(D) consists of the secured claim of Santander Consumer USA ("Santander"). Santander holds a secured lien against the Debtors' 2004 Toyota Sienna, securing debt in the amount of \$3,622.13 and \$2,561.29 in pre-petition arrears. The Debtors propose to pay Santander's claim in full pursuant to the terms of the original Vehicle Loan Agreement, by making monthly payments of \$417.73 until the claim is satisfied.

Santander's claim is impaired, and it did not cast a ballot. Therefore, Class 1(D)

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is deemed to reject the Plan.

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Class 1(E) – Secured Claim of the Internal Revenue Service – Deemed to Reject

Class 1(E) consists of the secured claim of the Internal Revenue Service (the "IRS"). The IRS holds a blanket security lien against the Debtors' assets, securing debt in the amount of \$40,222.59. The Debtors propose to pay the IRS's claim in full by making monthly payments of \$759.60 for sixty months.

The IRS's claim is impaired, and it did not cast a ballot. Therefore, Class 1(E) is deemed to reject the Plan.

Class 2(A) – General Unsecured Claims – Deemed to Reject

Class 2(A) consists of general unsecured claims ("GUC") totaling \$65,608.32. The Debtors propose to pay 100% of all claims in Class 2(A) over a period of five years by making monthly payments of \$1,093.46 beginning on the first day of the month following the Effective Date.

Claims in this class are impaired and entitled to vote on the Plan. No votes were received. Therefore, Class 2(A) is deemed to reject the Plan.

Class 2(B) – Unsecured Claim of U.S. Department of Education – Deemed to Reject

Class 2(B) consists of the unsecured claim of the U.S. Department of Education c/o FedLoan Servicing ("U.S. Dept. of Educ.") for Debtors' student loans totaling \$46,383.05 (the "Student Loans"). The Debtors propose to pay their Student Loans in full over a period of 18 years in accordance with the current terms of repayment. The Debtors state that they are on an "income-based" repayment plan and are not making any payments. Debtors propose to begin making payments of \$214.73 per month beginning on the first day of the month following the Effective Date.

Class 2(B) is impaired, and U.S. Dept. of Educ. did not cast a ballot. Therefore, Class 2(B) is deemed to reject the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

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For the reasons set forth below, the Court will require the Debtors to submit supplemental briefing and evidence in support of plan confirmation.

A. The Debtors Have Not Satisfied § 1129(a)(8) And Have Not Established That The Plan Can Be Crammed Down On All Impaired Classes

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. Impaired Classes 1(A), 1(B), and 1(C) have accepted the Plan. However, Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. *See In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (To accept a Plan, members of a class must affirmatively vote in favor of the Plan). Accordingly, the Plan does not satisfy § 1129(a)(8) and must, therefore, satisfy § 1129(b).

Pursuant to § 1129(b)(1), a plan may be confirmed where not all impaired classes vote to accept the plan, provided that "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." With respect to a class of secured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A).

Under the Plan, Classes 1(D) and 1(E) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these

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classes. However, the Court finds that the Debtors have not carried their burden of proving that § 1129(b)(2)(A)(i)(II) is satisfied because they have not shown that the holders of claims in Classes 1(D) and 1(E) are receiving the present value of their claims as of the effective date since the Plan does not contemplate paying any interest to these classes. Therefore, the Debtors must revise the Plan to address this issue and submit evidence establishing that the proposed interest rates adequately compensate the respective creditors for the risk of receiving payments over time.

Similarly, with respect to a class of unsecured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. § 1129(b)(2)(B).

Under the Plan, Classes 2(A) and 2(B) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be also crammed down on these classes and, for the same reasons set forth above, the Debtors have not carried their burden of proving that § 1129(b)(2)(B)(i) is satisfied because they have not proposed to pay Classes 2(A) and 2(B) any interest. The Debtors have also not satisfied § 1129(b)(2)(B)(ii)'s absolute priority rule because under the Plan the Debtors will retain their equity interests in estate assets without providing any new value. Therefore, the Debtors must also revise the Plan to address this issue and submit evidence establishing the adequacy of the proposed interest rates.

B. The Debtors Have Not Established That The Plan Satisfies § 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the

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debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtors submit that they have sufficient cash on hand to pay the anticipated amounts that are due on the Effective Date and submitted budget projections as Exhibit C to the Disclosure Statement and the Declaration of Anna Joyce Giles as Exhibit 1 to the Confirmation Brief in support of the Plan's feasibility.

However, as set forth above, the Debtors will need to modify the Plan to provide for interest payments to Classes 1(D), 1(E), 2(A) and 2(B), which will also necessitate revised plan projections. Furthermore, the Debtors' projections only contain information for the first twelve months of the Debtors' Plan and do not appear to account for costs of inflation or the potential for any increase in future income. Accordingly, the Court is unable to make an informed decision about the feasibility of the Debtors' Plan.

Finally, the Debtors' Plan relies, in part, on future income from the Business, but the Debtors have not submitted any evidence establishing that the net profits from the Business will be adequate to make the proposed Plan payments. This is especially important given that the nature of the Business exposes it to extensive risk and because any significant impact on the profitability of the Business has the potential to sink the Debtors' Plan.

Based on the foregoing, the Court will require the Debtors to submit revised plan projections for a minimum of five years as well as financial projections for the Business for five years.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to **September 24, 2019 at 10:00 a.m.** The Debtors are directed to file supplemental briefing addressing the issues identified above by no later than **September 3, 2019**. The deadline to file any opposition to the supplemental briefing is **September 10, 2019**. The deadline for the Debtors to file a reply to any opposition is **September 17, 2019**.

The Debtors are directed to give notice of the continuance and lodge a scheduling

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order, via the Court's LOU system, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As modified by the Court approved stipulations between the Debtors and US Bank [Doc. Nos. 73, 82], JP Morgan [Doc. Nos. 95, 98], and CSMC [Doc. Nos. 130, 138].

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:19-10095 Jorge Villalobos Aguirre

Chapter 7

Adv#: 2:19-01099 SECURITY FIRST BANK v. AGUIRRE

#100.00 HearingRE: [19] Motion for Default Judgment

Docket 19

Tentative Ruling:

8/6/2019

For the reasons set forth below, the Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint for Nondischargeability of Debt [Doc. No. 1] (the "Complaint")
- 2) Plaintiff's Motion for Default Judgment Under LBR 7055-1 [Doc. No. 19] (the "Motion")
 - a) Notice of Motion for Default Judgment Under LBR 7055-1 [Doc. No. 20]

I. Facts and Summary of Pleadings

On April 4, 2019, Security First Bank (the "Plaintiff") filed a *Complaint for Nondischargeability of Debt* [Doc. No. 1] (the "Complaint") against Jorge Villalobos Aguirre (the "Defendant"). After Defendant failed to respond to the Complaint, the Clerk of the Court entered Defendant's default on May 15, 2019. Doc. No. 12. The Complaint alleges that the Defendant obtained credit from the Plaintiff by materially overstating his income. The Complaint alleges that the indebtedness incurred is non-dischargeable pursuant to § 523(a)(2)(B).

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). Based upon the Complaint's allegations, as well as the evidence submitted in support of the Motion for Default Judgment, the Court makes the findings set forth below.

Section 523(a)(2)(B) excepts from discharge indebtedness obtained through use of a statement in writing:

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- i. that is materially false;
- ii. respecting the debtor's or an insider's financial condition;
- iii. on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- iv. that the debtor caused to be made or published with intent to deceive....

§ 523(a)(2)(B).

To prevail upon a claim under § 523(a)(2)(B), a creditor must satisfy, by a preponderance of the evidence, the following requirements:

- (1) a representation of fact by the debtor,
- (2) that was material,
- (3) that the debtor knew at the time to be false,
- (4) that the debtor made with the intention of deceiving the creditor,
- (5) upon which the creditor relied,
- (6) that the creditor's reliance was reasonable,
- (7) that damage proximately resulted from the representation.

In re Candland, 90 F.3d 1466, 1469 (9th Cir. 1996), as amended (Oct. 2, 1996).

A statement is "materially false if it includes information which is 'substantially inaccurate' and is of the type that would affect the creditor's decision making process. To except a debt from discharge, the creditor must show not only that the statements are inaccurate, but also that they contain important and substantial untruths."

Candland, 90 F.3d at 1470.

On June 19, 2018, Defendant executed a *Consumer Loan Agreement* (the "June Agreement") with Plaintiff for the principal amount of \$14,346.00. To obtain the credit, Defendant represented that his annual income was \$56,000, when in fact Defendant's annual income was only \$19,145.28.

On August 14, 2018, Defendant executed an additional *Consumer Loan Agreement* (the "August Agreement") with Plaintiff for the principal amount of \$5,700. To obtain the credit, Defendant represented that his annual income was \$85,000, when in fact Defendant's annual income was only \$19,145.28.

Plaintiff relied upon Defendant's representations regarding his annual income in deciding to extend the credit. Defendant's representations were material. Given the disparity between his actual income and the income represented on the loan

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applications, Defendant knew that the representations were false and made the representations for the purpose of deceiving Plaintiff. Plaintiff reasonably relied upon the representations, and was damaged as a result of that reliance, since Plaintiff would not have extended the credit had it known Defendant's actual annual income. Plaintiff is entitled to a judgment that the indebtedness arising in connection with the June Agreement and August Agreement is excepted from Defendant's discharge, pursuant to § 523(a)(2)(B). **[Note 1]**

Based upon the foregoing, the Motion for Default Judgment is GRANTED. Within seven days of the hearing, Plaintiff shall submit a proposed default judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Complaint requests an award of "the Plaintiff's other costs and disbursements incurred for the collection of this debt and of this action as permitted by applicable law." Complaint at ¶ 28.b.iv. In the Motion for Default Judgment, Plaintiff has not requested attorney's fees and has submitted no evidence regarding the attorney's fees incurred. Therefore, the Court declines to award attorney's fees. However, Plaintiff is entitled to costs in the amount of \$350 on account of the fee for filing the Complaint.

Party Information

Debtor(s):

Jorge Villalobos Aguirre

Represented By
Giovanni Orantes

Defendant(s):

JORGE VILLALOBOS AGUIRRE

Pro Se

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Plaintiff(s):

SECURITY FIRST BANK

Represented By
Donald T Dunning
James MacLeod

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#1.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 10-16-18; fr. 12-12-17; 3-7-18; 5-8-18; 10-16-18; 12-11-18; 2-12-19; 3-12-19

Docket 1

***** VACATED *** REASON: DISMISSED 8-7-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18; 12-11-18; 2-12-19

Docket 1

***** VACATED *** REASON: DISMISSED 8-7-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Represented By
Kelly F Ryan

Henry A. Hakopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01387 Elissa D. Miller, solely in her capacity as chapte v. OJ Insulation, L.P., a

#3.00 Status Hearing to Monitor Consummation

RE: [1] Adversary case 2:18-ap-01387. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against OJ Insulation, L.P., a Delaware limited partnership. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-15-19**

Tentative Ruling:

6/10/2019

This action has settled. All litigation dates and deadlines previously ordered by the Court are VACATED. A continued Status Conference to monitor consummation of the settlement shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By

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CONT... QUIGG LA11, LLC

Chapter 7

David M Reeder

Defendant(s):

OJ Insulation, L.P., a Delaware

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01390 Elissa D. Miller, solely in her capacity as chapte v. Mulligan's Painters, Inc.,

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01390. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mulligan's Painters, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions. At the Status Conference conducted on June 11, 2019, the Court advised the parties that the matter would be ordered to formal mediation at the August 13, 2019 Status Conference unless the parties had demonstrated they had engaged in meaningful settlement discussions.

Based upon its review of the Joint Status Report, it does not appear to the Court that the parties are making meaningful progress toward settlement. Good cause appearing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
- 2) The litigation deadlines previously ordered shall continue to apply, subject to

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QUIGG LA11, LLC

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an extension for good cause shown.

- 3) Absent further order of the Court, no further Status Conferences will be conducted.

Plaintiff shall submit an order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mulligan's Painters, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#5.00 Cont'd Status Hearing

RE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-19 at 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Premium Energy Solutions, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

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Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01392 Elissa D. Miller, solely in her capacity as chapte v. State Plastering, Inc., a

#6.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01392. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against State Plastering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-29-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

State Plastering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

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CONT... QUIGG LA11, LLC

Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01393 Elissa D. Miller, solely in her capacity as chapte v. Sunland Wood Products,

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01393. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Sunland Wood Products, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

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Tentative Ruling:

8/8/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. On June 27, 2019, the Court issued an order assigning this matter to mediation. Doc. No. 19.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, subject to an extension for good cause shown.
- 2) Absent further order of the Court, no further Status Conferences will be conducted.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Sunland Wood Products, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01394 Elissa D. Miller, solely in her capacity as chapte v. Grandmaison

#8.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01394. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Grandmaison Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr.3-19-19; 6-11-2019

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Grandmaison Construction, Inc., a

Represented By
Mark T Young

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01396 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#9.00 Status Hearing to Monitor Consummation RE: [1] Adversary case 2:18-ap-01396. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation, Cemex Construction Materials Pacific, LLC, a Delaware limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19

Docket 1

***** VACATED *** REASON: CASE DISMISSED 7-2-19**

Tentative Ruling:

6/10/2019

This action has settled. All litigation dates and deadlines previously ordered by the Court are VACATED. In view of the settlement, the Trustee's *Motion for Default Judgment* [Doc. No. 18] shall be deemed to have been withdrawn. A continued Status Conference to monitor consummation of the settlement shall be held on **August 13, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... QUIGG LA11, LLC

Chapter 7

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Cemex Construction Materials

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01397 Elissa D. Miller, solely in her capacity as chapte v. Allied Roofing and

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01397. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Allied Roofing and Waterproofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Allied Roofing and Waterproofing,

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#11.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-15-19 at 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

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Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01399 Elissa D. Miller, solely in her capacity as chapte v. Old World Precast, Inc., a

#12.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01399. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Old World Precast, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Old World Precast, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

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Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19; 6-11-19

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Tentative Ruling:

8/8/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions.

The Trustee and the Defendant have agreed upon an open-ended extension of Defendant's deadline to respond to the Complaint, terminable by the Trustee, to enable the parties to engage in settlement discussions.

At the Status Conference conducted on June 11, 2019, the Court advised the parties that the matter would be ordered to formal mediation at the August 13, 2019 Status Conference unless the parties had demonstrated they had engaged in meaningful settlement discussions.

Based upon its review of the Trustee's Unilateral Status Report, it does not appear to the Court that the parties are making meaningful progress toward settlement. Therefore, the Court will order the matter to formal mediation and will set a deadline by which Defendant must respond to the Complaint.

Good cause appearing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Defendant shall respond to the Complaint by no later than **9/13/2019**.
- 2) A continued Status Conference shall be held on **10/15/2019 at 10:00 a.m.**

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A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

- 3) The following litigation deadlines shall apply:
- a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the

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- parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
- ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 4) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a

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hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01405 Elissa D. Miller, solely in her capacity as chapte v. American Express

#14.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01405. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against American Express Company, a New York Corporation, American Express Travel Related Services Company, Inc., a New York Corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

American Express Company, a New

Pro Se

American Express Travel Related

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

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Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#15.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONT'D TO 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

8/9/2019

No appearances required. The Court has entered an order continuing this Status Conference to **November 12, 2019, at 10:00 a.m.** given the settlement of this action.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

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Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01407 Elissa D. Miller, solely in her capacity as chapte v. HD Supply Construction

#16.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01407. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against HD Supply Construction Supply Group, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

HD Supply Construction Supply

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01408 Elissa D. Miller, solely in her capacity as chapte v. Cook Development

#17.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01408. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Cook Development Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

The Court notes that the Defendant, possibly in error, checked the box indicating that it does not consent to the Bankruptcy Court's entry of a final judgment. On March 20, 2019, the Court entered a Scheduling Order predicated upon the Defendant's consent to the Bankruptcy Court's entry of a final judgment. *See* Doc. No. 13 (the "Scheduling Order"). The Scheduling Order provides in relevant part:

Defendant has timely demanded a jury trial in this avoidance action, has not filed a proof of claim against the estate, and consents to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."). Because both Plaintiff and Defendant have consented to the Bankruptcy Court's entry of final judgment, the jury trial will be conducted by the Bankruptcy Court. *See* Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only with the consent of all parties).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Scheduling Order at ¶ 1.

Defendant is not allowed to withdraw its consent to the Bankruptcy Court's entry of a final judgment at this stage of the proceedings.

On March 20, 2019, the Court ordered the Chapter 7 Trustee (the "Trustee") to submit an order assigning this matter to mediation (the "Mediation Order"). Doc. No. 31. The Trustee failed to submit the Mediation Order. On June 26, 2019, the Court once again ordered the Trustee to submit the Mediation Order. Doc. No. 17. The Mediation Order has not yet been submitted.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Trustee shall submit the Mediation Order by no later than **August 27, 2019**. If the Trustee does not comply with this deadline, the Court will require the Trustee to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.
- 2) Defendant shall be deemed to have consented to the Bankruptcy Court's entry of a final judgment in this action.
- 3) The litigation deadlines previously ordered shall continue to apply, subject to an extension for good cause shown.
- 4) Absent further order of the Court, no further Status Conferences will be conducted.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Defendant(s):

Cook Development Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapt v. Hankey Capital, LLC, a

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapte v. JSA Engineering, Inc., a

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-19 at 10:00 A.M.**

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01414 Elissa D. Miller, solely in her capacity as chapte v. B&R Construction, Inc., a

#21.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01414. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against B&R Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

B&R Construction, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01416 Elissa D. Miller, solely in her capacity as chapte v. J.M.I. Steel, Inc., a

#22.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01416. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against J.M.I. Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

3-19-19; 6-11-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-19-19**

Tentative Ruling:

6/10/2019

See Cal. No. 5, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

J.M.I. Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01417 Elissa D. Miller, solely in her capacity as chapte v. JC Drywall Designs, Inc.,

#23.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01417. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JC Drywall Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19; 6-11-19

Docket 1

Tentative Ruling:

8/8/2019

The Court conducted an initial Status Conference on March 19, 2019, and subsequently issued an order setting litigation deadlines. On June 26, 2019, the Court ordered the Chapter 7 Trustee (the "Trustee") so submit an order assigning this matter to mediation (the "Mediation Order"). Doc. No. 18. The Trustee has not submitted the Mediation Order.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Trustee shall submit the Mediation Order by no later than **August 27, 2019**. If the Trustee does not comply with this deadline, the Court will require the Trustee to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.
- 2) The litigation deadlines previously ordered shall continue to apply, subject to an extension for good cause shown.
- 3) Absent further order of the Court, no further Status Conferences will be conducted.

The Court will prepare and enter an appropriate order.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JC Drywall Designs, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#24.00 Status Hearing

RE: [36] Amended Complaint Trustee's First Amended Complaint by Zi Chao Lin on behalf of Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez. (RE: related document(s)1 Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) filed by Plaintiff Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez). (Lin, Zi)

Docket 36

***** VACATED *** REASON: CONTINUED 8-21-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Clara E Melendez, an individual

Pro Se

DOES 1-20

Pro Se

Jenny Melendez

Pro Se

Jenny Melendez, an individual

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... Jenny Melendez

Chapter 7

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:18-21480 Rosa Huong Duong

Chapter 7

Adv#: 2:19-01048 Miller, Chapter 7 Trustee v. Mai et al

#25.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01048. Complaint by Elissa D Miller, Chapter 7 Trustee against Mik H Mai, DLMRT Corporation Inc., a California corporation, Rosa Huong Duong, Pier Duong. (Charge To Estate). Complaint For (1) Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548, and 550, (2) Alter Ego, and (3) Conspiracy to Commit Fraudulent Transfer Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Werth, Steven)

fr. 5-14-19

Docket 1

***** VACATED *** REASON: CONT'D TO 9-4-19 AT 11:00 A.M.**

Tentative Ruling:

8/9/2019

Hearing VACATED. The Court has entered an order continuing this Status Conference to September 4, 2019, at 11:00 a.m., to take place concurrently with the hearing on the Chapter 7 Trustee's Motion for Summary Judgment.

Party Information

Debtor(s):

Rosa Huong Duong

Represented By
Barry E Borowitz

Defendant(s):

Mik H Mai

Pro Se

DLMRT Corporation Inc., a

Pro Se

Rosa Huong Duong

Pro Se

Pier Duong

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... Rosa Huong Duong

Chapter 7

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Steven Werth

Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

Adv#: 2:19-01065 BALL C M, Inc. v. Cenci et al

#26.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01065. Complaint by BALL C M, Inc. against Neilla M Cenci. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Slates, Ronald)

FR. 5-14-19

Docket 1

Tentative Ruling:

8/9/2019

On June 28, 2019, the Clerk of the Court entered Defendant's default. On July 16, 2019, the Court granted Plaintiff relief from the automatic stay, to enable Plaintiff to continue litigating the underlying State Court Action through which Plaintiff intends to establish the indebtedness alleged to be non-dischargeable. Plaintiff has represented that a judgment in the State Court Action will assist Plaintiff in presenting a Motion for Default Judgment to this Court.

Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) A continued Status Conference shall take place on **January 14, 2020, at 10:00 a.m.** By no later than fourteen days prior to the hearing, Plaintiff shall file a Unilateral Status Report, which shall discuss the status of the State Court Action.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT... Neilla M Cenci Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Defendant(s):

Neilla M Cenci

Pro Se

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

BALL C M, Inc.

Represented By
Ronald P Slates

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:18-24737 Sang Hoon Lee

Chapter 7

Adv#: 2:19-01143 United States Trustee for the Central District of v. Lee

#27.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01143. Complaint by United States Trustee for the Central District of California, Region 16 against Sang Hoon Lee. (Fee Not Required). Nature of Suit: (65 (Dischargeability - other)) (Law, Dare)

Docket 1

***** VACATED *** REASON: CONT'D TO 9-11-19 AT 10:00 A.M.**

Tentative Ruling:

8/9/2019

Hearing VACATED. The Court has entered an order continuing this Status Conference to September 11, 2019, at 10:00 a.m., to take place concurrently with the hearing on the United States Trustee's Motion for Default Judgment.

Party Information

Debtor(s):

Sang Hoon Lee

Represented By
Michael H Yi

Defendant(s):

Sang Hoon Lee

Pro Se

Plaintiff(s):

United States Trustee for the Central

Represented By
Dare Law

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01110 Nguyen dba Sam Bullion & Coin v. Zendedel

#28.00 Status Hearing RE: [1] Adversary case 2:19-ap-01110. Complaint by Sam Thuy Nguyen dba Sam Bullion & Coin against Bahram Zendedel. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

Docket 1

Tentative Ruling:

8/9/2019

The parties have reached an agreement in principle resolving this action. In the Court's experience, maintaining litigation deadlines is the best means of facilitating settlement. Accordingly, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** A Joint Status Report, which should discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **10/10/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **1/28/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **2/27/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **3/17/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Bahram Zendedel

Chapter 7

- e) The last day for dispositive motions to be heard is **3/24/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **3/28/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **4/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

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Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Bahram Zendedel

Chapter 7

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **4/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) Pursuant to the parties' request, the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

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CONT... Bahram Zendedel

Chapter 7

Defendant(s):

Bahram Zendedel Pro Se

Plaintiff(s):

Sam Thuy Nguyen dba Sam Bullion Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR) Pro Se

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Hearing Room 1568

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2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01111 Danny's Silver Jewelry Inc., a California cor v. Zendedel

#29.00 Status Hearing RE: [1] Adversary case 2:19-ap-01111. Complaint by Danny's Silver Jewelry Inc., a California corporation, dba Danny's Silver, Inc., dba Danny's Silver & Gold against Bahram Zendedel. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

Docket 1

Tentative Ruling:

8/9/2019

According to the Joint Status Report, the parties have discussed a potential resolution of this action. In the Court's experience, maintaining litigation deadlines is the best means of facilitating settlement. Accordingly, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** A Joint Status Report, which should discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **10/10/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **1/28/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **2/27/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **3/17/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert

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CONT...

Bahram Zendedel

Chapter 7

- discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **3/24/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **3/28/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **4/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed

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Bahram Zendedel

Chapter 7

supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **4/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) Pursuant to the parties' request, the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By

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CONT... Bahram Zendedel

Chapter 7

Khachik Akhkashian

Defendant(s):

Bahram Zendedel

Pro Se

Plaintiff(s):

Danny's Silver Jewelry Inc., a

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01114 Chady v. Zendedel

#30.00 Status HearingRE: [1] Adversary case 2:19-ap-01114. Complaint by Cyrus Chady, Bahram Zendedel against Bahram Zendedel. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Uyeda, James)

Docket 1

Tentative Ruling:

8/9/2019

On April 24, 2019, the Court issued a Scheduling Order [Doc. No. 6], which the Plaintiff served upon the Defendant on April 25, 2019. Doc. No. 7. The Scheduling Order provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than ten days prior to the date set for the first status conference. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

Scheduling Order at ¶ 6.

In his Answer to the Complaint, Defendant contests the Bankruptcy Court's authority to enter a final judgment in this proceeding. *See Answer at p. 17, ¶ 4* (seeking a determination that "the Bankruptcy Court ruling as to this proceeding is not a final order"). However, Defendant did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. Therefore, Defendant is deemed to consent to the Bankruptcy Court's authority to enter a final judgment. Further, a dischargeability action brought under § 523(a)(2), (a)(4), and (a)(6) is a core proceeding over which the Bankruptcy Court has statutory and constitutional authority to enter final judgment.

On February 26, 2019, the Court granted Plaintiff relief from the automatic stay, to enable Plaintiff to prosecute against Defendant two actions pending in the Los

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Chapter 7

Angeles Superior Court (the "State Court Actions"). Plaintiff seeks to establish the indebtedness which is alleged to be non-dischargeable in this proceeding by way of the State Court Actions. On June 18, 2019, the Court granted Plaintiff's motion to abstain from adjudicating this dischargeability action until Plaintiff had obtained final, non-appealable judgments in the State Court Actions.

Trial in one of the State Court Actions is set to commence on September 6, 2019. Trial in the other State Court Action is set to commence on December 9, 2019.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Defendant shall be deemed to consent to the Bankruptcy Court's authority to enter final judgment in this proceeding.
- 2) The litigation deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall take place on **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the State Court Actions, shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Defendant(s):

Bahram Zendedel

Pro Se

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CONT... Bahram Zendedel

Chapter 7

Plaintiff(s):

Cyrus Chady

Represented By
James S Uyeda

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:19-12402 Ryan James McMillin

Chapter 7

Adv#: 2:19-01137 Elite Optoelectronics Co., Ltd a China Limited Lia v. McMillin et al

#31.00 Status Hearing RE: [1] Adversary case 2:19-ap-01137. Complaint by G-Sight Solutions, LLC against Ryan James McMillin, G-Sight Solutions, Inc., a California Corporation. false pretenses, false representation, actual fraud)), (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)), (68 (Dischargeability - 523(a)(6), willful and malicious injury)), (14 (Recovery of money/property - other)) (Zshornack, Errol)

Docket 1

Tentative Ruling:

8/9/2019

In this dischargeability action, Plaintiffs have named as defendants the Debtor, Ryan J. McMillin, as well as G-Sight Solutions, Inc. ("G-Sight"), an entity that the Debtor allegedly used to perpetuate a scheme to interfere with Plaintiffs' business by diverting customers. The Complaint seeks a determination that the Debtor's indebtedness to Plaintiffs is non-dischargeable pursuant to § 523(a)(2)(A), (a)(4), and (a)(6). The prayer does not seek any relief against G-Sight. G-Sight has not responded to the Complaint.

The Court cannot enter judgment against G-Sight, which is not a debtor, on the claims for relief under § 523. By separate order, the Court will require Plaintiffs to appear and show cause why the Court should not dismiss the Complaint as to G-Sight, pursuant to Civil Rule 12(b)(6), based upon the Complaint's failure to state any claims upon which relief can be granted as to G-Sight.

The hearing on the Order to Show Cause shall take place on **September 24, 2019, at 10:00 a.m.** Plaintiff shall file a response to the Order to Show Cause by no later than **September 3, 2019**. Any opposition to Plaintiff's response shall be filed by no later than **September 10, 2019**. Plaintiff's reply to any opposition shall be filed by no later than **September 17, 2019**.

The Status Conference shall be continued to the date of the hearing on the Order to Show Cause. At the continued Status Conference, the Court will set updated litigation deadlines.

The Court will prepare and enter the Order to Show Cause and the order setting the Continued Status Conference.

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CONT... Ryan James McMillin

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ryan James McMillin

Represented By
John A Harbin

Defendant(s):

Ryan James McMillin

Pro Se

G-Sight Solutions, Inc., a California

Pro Se

Plaintiff(s):

Elite Optoelectronics Co., Ltd a

Pro Se

G-Sight Solutions, LLC, a California

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:19-13059 Norberto Pimentel

Chapter 7

Adv#: 2:19-01146 Wesley H Avery, Chapter 7 Trustee v. Pimentel et al

#32.00 Status Hearing RE: [1] Adversary case 2:19-ap-01146. Complaint by WESLEY Howard AVERY against Norberto Pimentel, Erica Pimentel. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Stevens, Adam)

Docket 1

Tentative Ruling:

8/9/2019

Having reviewed the Joint Status Report submitted by the parties, the Court
HEREBY ORDERS AS FOLLOWS:

- 1) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **9/12/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/24/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/23/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/11/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **2/18/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/22/2020**. (If the non-expert discovery

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Norberto Pimentel

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **3/10/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a

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CONT...

Norberto Pimentel

Chapter 7

party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **3/23/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Norberto Pimentel

Represented By
Marcus Gomez

Defendant(s):

Norberto Pimentel

Pro Se

Erica Pimentel

Pro Se

Joint Debtor(s):

Erica Pimentel

Represented By

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CONT... Norberto Pimentel

Chapter 7

Marcus Gomez

Plaintiff(s):

Wesley H Avery, Chapter 7 Trustee

Represented By
Georgeann H Nicol
Adam Stevens

Trustee(s):

Wesley H Avery (TR)

Represented By
Adam Stevens

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2:19-14528 Allen Joseph MacQuarrie

Chapter 7

Adv#: 2:19-01144 Borish et al v. Tabingo et al

#33.00 Status Hearing RE: [1] Adversary case 2:19-ap-01144. Complaint by Stephen & Ami Borish against Allen Joseph MacQuarrie. (d),(e)),(14 (Recovery of money/property - other)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Bonar, Roxanne)

Docket 1

Tentative Ruling:

8/9/2019

In this dischargeability action, Plaintiffs have named as defendants the Debtor, Allan J. Macquarrie, as well as Celgine Tabingo, Clarke Miller, KarmaBox Vending, and MyKarmabox.com (collectively, the "Non-Debtor Defendants"). The Complaint seeks a determination that the Debtor's indebtedness to Plaintiffs is non-dischargeable pursuant to § 523(a)(2)(A). The Complaint alleges that the Non-Debtor Defendants participated with the Debtor in the conduct giving rise to the indebtedness alleged to be non-dischargeable.

The Court cannot enter judgment against the Non-Debtor Defendants on the claim for relief under § 523(a)(2)(A). By separate order, the Court will require Plaintiffs to appear and show cause why the Court should not dismiss the Complaint as to the Non-Debtor Defendants, based upon the Complaint's failure to state any claims upon which relief can be granted as to the Non-Debtor Defendants.

The hearing on the Order to Show Cause shall take place on **September 24, 2019, at 10:00 a.m.** Plaintiff shall file a response to the Order to Show Cause by no later than **September 3, 2019**. Any opposition to Plaintiff's response shall be filed by no later than **September 10, 2019**. Plaintiff's reply to any opposition shall be filed by no later than **September 17, 2019**.

Prior to the Debtor's bankruptcy filing, Plaintiffs commenced an action in the State Court seeking to establish the indebtedness alleged to be non-dischargeable (the "State Court Action").

By separate order, the Court will require Plaintiffs and the Debtor to show cause why the Court should not *sua sponte* lift the automatic stay to allow the State Court

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CONT... Allen Joseph MacQuarrie

Chapter 7

Action to proceed. In the Court's view, the most efficient way to resolve this action is for Plaintiffs to prosecute the State Court Action to final judgment. In the event Plaintiffs obtain a final judgment in their favor, Plaintiffs may then return to this Court for a determination as to whether the indebtedness established by that judgment is dischargeable. The briefing deadlines set forth with respect to the Order to Show Cause regarding dismissal of the Non-Debtor Defendants shall also apply to the Order to Show Cause regarding the lifting of the automatic stay.

The Status Conference shall be continued to the date of the hearings on the Orders to Show Cause. At the continued Status Conference, the Court will set updated litigation deadlines.

The Court will prepare and enter the Orders to Show Cause and the order setting the Continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Allen Joseph MacQuarrie

Represented By
Shawn P Huston

Defendant(s):

Celgine Tabingo

Pro Se

Clarke Miller

Pro Se

KarmaBox Vending

Pro Se

MyKarmabox.com

Pro Se

Urban Vendor, Inc

Pro Se

Does 1 Through 20, Inclusive

Pro Se

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CONT... Allen Joseph MacQuarrie

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Allan J Macquarrie

Pro Se

Plaintiff(s):

Stephen Borish

Pro Se

Ami Borish

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:19-17856 Tucson Train LLC

Chapter 7

#34.00 Show Cause Hearing re [6] Requiring Debtor To Appear And Show Cause Why This Case Should Not Be Dismissed Based Upon Debtor's Lack Of Representation By Counsel

Docket 0

Tentative Ruling:

8/9/2019

For the reasons set forth below, the Chapter 7 petition is DISMISSED.

Tucson Train LLC (the "Debtor") filed a voluntary Chapter 7 petition on July 5, 2019. The Debtor is not represented by counsel. On July 10, 2019, the Court entered an *Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Based Upon Debtor's Lack of Representation by Counsel* [Doc. No. 6] (the "Order to Show Cause"). Debtor has not responded to the Order to Show Cause and has not retained counsel.

"[A] corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). This requirement is reiterated in Local Bankruptcy Rule ("LBR") 9011-2(a).

Debtor's Chapter 7 petition is DISMISSED. The Court will prepare and enter an order of dismissal.

Party Information

Debtor(s):

Tucson Train LLC

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#35.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19

Docket 1

***** VACATED *** REASON: CASE DISMISSED 8-6-19**

Tentative Ruling:

3/11/2019

Subsequent to the entry of Defendant's default, the Court vacated all previously ordered litigation deadlines. Doc. No. 35. On February 1, 2019, the Court approved a stipulation setting aside Defendant's default. Doc. No. 45.

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS that the following litigation deadlines shall apply:

- 1) The last day to amend pleadings and/or join other parties is **4/11/2019**.
- 2) The last day to disclose expert witnesses and expert witness reports is **7/30/2019**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/29/2019**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **9/17/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 13, 2019

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10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

closest date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **9/24/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/28/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **10/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

**United States Bankruptcy Court
Central District of California
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Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- c) The failure of a party to file a Motion in Limine complying with the requirements of ¶(8)(b) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(8)(b) and shall be filed by the deadline specified in ¶(8)(b). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 9) Trial is set for the week of **10/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#36.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 12-11-18; 2-12-19; 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 5-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#37.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 3-12-19; 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 6-24-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

#38.00 Hearing
 RE: [25] Motion for Default Judgment (Snyder, Richard)

 FR. 8-7-19

Docket 25

***** VACATED *** REASON: PER ORDER ENTERED 8-9-19**

Tentative Ruling:

8/9/2019

Hearing VACATED. The Court has entered an order denying the Motion for Default Judgment as moot given the Court's granting of Defendant's Motion to Vacate Default.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul A Carrasco

Represented By
Raymond H. Aver

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

Adv#: 2:18-01324 Gonzalez v. Marquez et al

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01324. Complaint by Rosendo Gonzalez against Victor Marquez, David Marquez. (Charge To Estate). Summons and Notice of Status Conference in Adversary Proceeding and Adversary Proceeding Cover Sheet (Attachments: # 1 Part 2) Nature of Suit: (14 (Recovery of money/property - other)) (Chung, Toan)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 1-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Defendant(s):

Victor Marquez

Pro Se

David Marquez

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Toan B Chung

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#101.00 Pre-Trial Conference

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2020 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

The Home Depot, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Lempa Roofing Inc

Chapter 7

Home Depot Credit Services

Pro Se

Home Depot U.S.A., Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Singh, Sonia)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
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Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se
Yellowstone Capital West	Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee	Represented By Sonia Singh
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Golden Diamond International Inc.

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#103.00 Pre-Trial Conference RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission 4) Quiet Title by Peter W Lianides on behalf of James De Arruda against Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi.

Docket 0

***** VACATED *** REASON: CONTINUED TO 11-12-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:18-18233 Jessie O Unite

Chapter 7

Adv#: 2:18-01325 South Bay Credit Union v. Unite

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01325. Complaint by South Bay Credit Union against Jessie Orden Unite. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Simon, A. Lysa)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 4-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie O Unite

Represented By
Edwin A Barnum

Defendant(s):

Jessie Orden Unite

Pro Se

Plaintiff(s):

South Bay Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Wesley H Avery (TR)

Represented By
Edwin A Barnum

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:18-19418 Eva Diaz

Chapter 7

Adv#: 2:18-01308 LENDMARK FINANCIAL SERVICES, LLC. v. Diaz

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01308. Complaint by The Dunning Law Firm Lendmark Financial Services, LLC against Eva Luz Diaz. false pretenses, false representation, actual fraud)) (Dunning, Donald)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 1-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eva Diaz	Pro Se
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Defendant(s):

Eva Luz Diaz	Pro Se
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Plaintiff(s):

LENDMARK FINANCIAL	Represented By Donald T Dunning
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Trustee(s):

Wesley H Avery (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#106.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18; 11-13-18; 3-12-19; 5-14-19; 6-11-19

Docket 1

***** VACATED *** REASON: Cont'd to 10/15/2019 at 11:00 a.m.**

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Raviner Kuma Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90 days, to allow him to investigate the facts of this action, and potentially substitute in

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. United States

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordan Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

United States Department of Health

Represented By
Elan S Levey

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#108.00 Hearing
RE: [71] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 71

***** VACATED *** REASON: PER ORDER ENTERED 8-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#109.00 Hearing
RE: [56] Disclosure Statement describing chapter debtor's chapter 11 plan of reorganization.

fr. 7-17-19

Docket 13

Tentative Ruling:

8/9/2019

For the reasons set forth below, the Disclosure Statement is APPROVED.

Pleadings Filed and Reviewed

1. Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 56] (the "Disclosure Statement")
2. Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 57] (the "Plan")
3. Debtor's Notice of Hearing on Adequacy of Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated May 31, 2019 [Doc. No. 58]
4. Objection to Approval of Debtor's Disclosure Statement [Doc. No. 60] (the "Objection")
5. Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and for Plan Treatment on First Lien Secured by Real Property Located at 8429 Rives Ave, Downey, CA 90240 [Doc. No. 66]
6. Order Continuing Hearing on the Adequacy of Debtor's Disclosure Statement [Doc. No. 77]
7. Order Granting Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and for Plan Treatment on First Lien Secured by Real Property Located at 8429 Rives Ave, Downey, CA 90240 [Doc. No. 81]
8. Debtor's Exhibit H, Amended Liquidation Analysis in Support of Debtor's Disclosure Statement Dated May 31, 2019 [Doc. No. 83] (the "Amended Liquidation Analysis")

I. Facts and Summary of Pleadings

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

Debtor-in-possession, Maria G. Gallarza-Dominguez (the "Debtor"), filed this voluntary Chapter 11 case on June 26, 2018 (the "Petition Date"). The Debtor is employed and generates regular monthly income. The Debtor's primary assets consist of real property located at 8429 Rives Ave, Downey, CA 90240 (the "Rives Property") and 10735 Lesterford Avenue, Downey, CA 90241 (the "Rental Property"). The Debtor collects monthly income from the Rental Property.

The Debtor states that she sought bankruptcy protection after experiencing several years of financial difficulties that arose after her husband lost his high earnings job and as a result of a loss of rental income from the Rental Property. The Debtor and her husband attempted to modify the lien on the Rental Property, but negotiations were unsuccessful, and they ultimately fell behind on the payments. The Debtor and her husband also fell behind on payments for the Rives Property but were able to modify that loan and have been current ever since. The Debtor states that she now has stable rental income and anticipates being able to increase that income in August 2019.

On January 17, 2019, the Court entered an order granting the Debtor's motion to value the Rental Property at \$700,000 for purposes of plan confirmation [Doc. No. 42] (the "Rental Property Valuation Order"). Pursuant to that order, the first-priority lien recorded in favor of Deutsche Bank National Trust Company, as Trustee for U.S. Bank, N.A., serviced by Ocwen Loan Servicing, LLC ("Deutsche Bank") was bifurcated into a secured claim of \$700,000 and an unsecured claim of \$495,778.35 and Real Time Solutions' second-priority lien was stripped off in full.

The Debtor presently seeks approval of her Disclosure Statement. The following provisions are the material provisions of the Debtor's Plan:

Administrative Claims

The Debtor anticipates that administrative fees for professionals will be approximately \$30,000 on the Effective Date. The Debtor proposes to pay all administrative claims in full, on the Effective Date, from available cash on hand.

Post-Petition Tax Claim

The Debtor proposes to pay the Los Angeles Property Tax Collector's post-petition real property tax claim of \$10,620.99 in full on the Effective Date.

**United States Bankruptcy Court
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Los Angeles
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Tuesday, August 13, 2019

Hearing Room 1568

11:00 AM

CONT... Maria G Gallarza-Dominguez

Chapter 11

Class 2(a) – Secured Claim of Forethought Life Insurance Company ("Forethought")

Forethought holds a first-priority deed of trust against the Rives Property securing debt in the approximate amount of \$220,576.42. The Debtor proposes to continue making regular monthly mortgage payments as they become due based on the respective loan documents. Accordingly, the Debtor states that this claim will remain unchanged and is unimpaired.

On June 7, 2019, Forethought filed a timely objection to the Debtor's Disclosure Statement asserting that, despite the Debtor's classification of its' claim as unimpaired, certain language in the Plan appeared to apply to its claim in a way that it argued resulted in an impairment. Accordingly, Forethought asserted that the Disclosure Statement and Plan must be modified to either classify it as an impaired creditor with voting rights or make it clear that those provisions do not apply to its claim. Forethought also requested that the Plan clarify whether the loan will remain impounded for taxes and insurance after confirmation because the Plan does not adequately address this.

On July 2, 2019, the Debtor filed a *Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and For Plan Treatment on First Lien Secured By Real Property Located at 8429 Rives Ave, Downey, CA 90240* [Doc. No. 66] (the "Motion re Forethought Treatment"), pursuant to which the Debtor sought approval of a stipulation resolving Forethought's Objection in exchange for the Debtor's agreement to make adequate protection payments and modify the Plan treatment described in the Plan.

On July 24, 2019, the Court entered an order granting the Motion re Forethought Treatment [Doc. No. 81]. Accordingly, Forethought's claim is unimpaired for purposes of plan confirmation and Forethought will be deemed to have accepted the Plan pursuant to 11 U.S.C. § 1126(f).

Class 5(a) – Secured Claim of Deutsche Bank

Deutsche Bank holds a first-priority deed of trust against the Rental Property. Pursuant to the Rental Property Valuation Order, Deutsche holds a secured claim of \$700,000 against the Rental Property. The Debtor proposes to pay Deutsche's claim in full, plus 5.5% interest, by making monthly installment payments of \$4,099.21 over a thirty-year period. Deutsche's claim is impaired, and it is entitled to vote on the

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CONT... **Maria G Gallarza-Dominguez**
Plan.

Chapter 11

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtor estimate hold aggregate claims in the amount of \$684,385.99. The Debtor proposes to pay this class 3% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$342.19. This class is impaired and entitled to vote on the Plan.

Means of Implementation

The Debtor's Plan will be funded from the following sources:

- i. Approximately \$40,671.76 in anticipated cash on hand on the Effective Date.
- ii. Future disposable income for 5 years. The Debtor anticipates having sufficient income to cover all proposed plan payments. After deducting expenses and making all of the foregoing proposed Plan payments, the Debtor's projections indicate that she will only have approximately (\$995.25) in net monthly income for the month of July 2019 and then approximately \$0.75/month for the remaining months of her Plan.

Amended Liquidation Analysis

Following an initial hearing on the adequacy of the Debtor's Disclosure Statement, the Court *sua sponte* ordered the matter continued to this date and directed the Debtor to file an amended liquidation analysis to address certain issues identified by the Court [*see* Doc. No. 76, incorporated in full by reference]. On July 30, 2019, the Debtor submitted a timely Amended Liquidation Analysis [Doc. No. 83], which satisfactorily addresses the Court's concerns.

As of the preparation of this tentative ruling, no outstanding opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides

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CONT... Maria G Gallarza-Dominguez

Chapter 11

adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement and Amended Liquidation Analysis contain adequate information, in view of the size and complexity of this case to

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CONT... Maria G Gallarza-Dominguez

Chapter 11

warrant approval. Among other things, the Disclosure Statement describes: (1) the factors precipitating the Chapter 11 filing, (2) a description of the Debtor's assets and their estimated values, (3) the classification structure of the Plan, (4) an Amended Liquidation Analysis, (5) risk factors, (6) estimated administrative expenses, and (7) the means for execution of the Plan.

Although the following are plan confirmation issues, the Debtor should be aware of the following issues that may prevent confirmation of the Plan:

1. The Debtor's Projected Income and Expenses reflects negative income of (\$999.25) beginning in July 2019 and does not identify sufficient subsequent income to make up for the shortfall. Additionally, after the July 2019 deficit, the Debtor's net monthly income after making all anticipated Plan payments is less than \$1. Therefore, the Debtor's plan confirmation brief must include adequate briefing to address how the Debtor intends to make up for the shortfall and satisfy this Court that confirmation of the Plan is not likely to be followed by liquidation in the event any unforeseen expenses arise.
2. The Debtor proposes to retain her interest in the Rives Property and Rental Property, while only paying general unsecured creditors 3% of their claims, without interest, and without providing a new value contribution. Accordingly, the Debtor should be aware that she will not be able to satisfy the absolute priority rule unless Class 6(b) votes to accept the Plan.

The following dates and deadlines will apply to solicitation and confirmation of the Debtor's Plan:

- 1) A hearing will be held on the confirmation of the Debtors' Chapter 11 Plan of Reorganization on **November 5, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan and, if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **August 23, 2019.**
- 3) **September 27, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.

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CONT...

Maria G Gallarza-Dominguez

Chapter 11

- 4) **October 15, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtors have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **October 22, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **October 29, 2019** is fixed as the last day on which the Debtors may file and serve a reply to any opposition to the Confirmation Motion ("Reply").

III. Conclusion

For the reasons set forth above, the Disclosure Statement is APPROVED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

United States Bankruptcy Court
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11:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#110.00 Hearing
RE: [353] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 353

*** VACATED *** REASON: PER ORDER ENTERED 8-9-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A. Stubbe

**United States Bankruptcy Court
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Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [67] Motion For Summary Judgment as to First Claim for Relief in Plaintiff's
Complaint (Hilton, Lawrence)

FR. 6-4-19

Docket 67

***** VACATED *** REASON: CONTINUED 9-17-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By

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CONT... JW Wireless Inc.

Chapter 7

Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
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Wednesday, August 14, 2019

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10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#2.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-12-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED 10-15-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

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CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se
Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his	Represented By Thomas J Eastmond
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Trustee(s):

John J Menchaca (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
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Los Angeles
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Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

2:16-18722 Global Textrade, Inc.

Chapter 7

#3.00 APPLICANT: TRUSTEE: Sam Leslie

Hearing re [35] & [36] Trustee's Final Report and Applications for Compensation

Docket 36

Tentative Ruling:

8/13/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,375.37 approved, but payment shall be limited to \$470.50 per Trustee's request [*see* Doc. No. 35]

Total Expenses: \$18.47 approved, but payment shall be limited to \$6.32 per Trustee's request [*Id.*]

Franchise Tax Board: \$829.28 approved, but payment shall be limited to \$441.09 per Trustee's request [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Global Textrade, Inc.

Represented By
Jiyoun Kym

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

CONT... Global Textrade, Inc.

Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

2:16-18722 Global Textrade, Inc.

Chapter 7

#3.10 APPLICANT: ACCOUNTANT: LEA ACCOUNTANCY LLP

Hearing re [35] & [36] Trustee's Final Report and Applications for Compensation

Docket 36

Tentative Ruling:

8/13/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,754.50 approved, but payment shall be limited to \$2,994.84 per Trustee's request [*See* Doc. No. 35]

Expenses: \$388.50 approved, but payment shall be limited to \$132.90 per Trustee's request [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Global Textrade, Inc.

Represented By
Jiyoung Kym

**United States Bankruptcy Court
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10:00 AM

CONT... Global Textrade, Inc.

Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Noreen A Madoyan

**United States Bankruptcy Court
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Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

2:16-18722 Global Textrade, Inc.

Chapter 7

#3.20 APPLICANT: OTHER: Franchise Tax Board

Hearing re [35] & [36] Trustee's Final Report and Applications for
Compensation

Docket 36

Tentative Ruling:

8/13/2019

See Cal. No. 3, incorporated in full by reference.

Party Information

Debtor(s):

Global Textrade, Inc.

Represented By
Jiyoung Kym

Trustee(s):

Sam S Leslie (TR)

Represented By
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, August 14, 2019

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10:00 AM

2:19-15475 Jose Alberto Vazquez

Chapter 7

#4.00

Show Cause Hearing
RE: [20] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 1

***** VACATED *** REASON: DISMISSED 7-3-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Alberto Vazquez

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 14, 2019

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [2446] interim applications for the allowance of fees and reimbursement of expenses by professionals

Docket 0

***** VACATED *** REASON: DUPLICATE ENTRY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
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Wednesday, August 14, 2019

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5

Docket 2558

***** VACATED *** REASON: CONTINUED TO 8-21-19 at 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5

Docket 2557

***** VACATED *** REASON: CONTINUED TO 8-21-19 at 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 HearingRE: [2768] Application for Compensation for Milbank, Tweed, Hadley & McCloy, Creditor Comm. Atty, Period: 1/1/2019 to 4/30/2019, Fee: \$2,181,376.50, Expenses: \$27,904.46.

Docket 2768

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 6, 2018, the Court entered an order authorizing the Official Committee of Unsecured Creditors (the "Committee") to retain Milbank LLP ("Milbank") as its counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Milbank has submitted eight Monthly Applications [Doc. Nos. 871, 872, 1177, 1420, 1679, 1975, 2271, and 2469], none of which have been opposed.

No objections to the *Second Interim Application of Milbank LLP for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* [Doc. No. 2768] (the "Application") have been filed. Having reviewed the Application and the *Declaration of Michael Strollo* [Doc. No. 2771] filed in support thereof, the Court approves, on an interim basis, the fees and expenses set forth

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CONT... Verity Health System of California, Inc.

Chapter 11

below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$2,181,376.50

Expenses: \$27,904.46

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
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CONT...

Verity Health System of California, Inc.

Steven J Kahn

Nicholas A Koffroth

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 HearingRE: [2770] Application for Compensation First Interim Application of Arent Fox LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al., Creditor Comm. Aty, Period: 1/1/2019 to 4/30/2019, Fee: \$70,628.50, Expenses: \$38.25.

Docket 2770

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On March 5, 2019, the Court entered an order authorizing the Official Committee of Unsecured Creditors to employ Arent Fox LLP ("Arent Fox") as its special counsel. Arent Fox submitted a Monthly Application on March 20, 2019 [Doc. No. 1851] but withdrew the Monthly Application at the direction of the United States Trustee [Doc. No. 1902]. Arent Fox has not received any payments under the Fee Procedures Order.

No objections to the *First Interim Application of Arent Fox LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* [Doc. No. 2770] (the "Application") have been filed. Having reviewed the Application and

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Chapter 11

the *Declaration of Michael Strollo* [Doc. No. 2771] in support thereof, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$70,628.50

Expenses: \$38.25

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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Verity Health System of California, Inc.

Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 14, 2019

Hearing Room 1568

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Chapter 11

#10.00 HearingRE: [2774] Application for Compensation Second Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for Nelson Hardiman LLP, Special Counsel, Period: 1/1/2019 to 4/30/2019, Fee: \$907,634.10, Expenses: \$3,153.27. (Shirley, Rosa)

Docket 2774

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). [Note 1] Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. [Note 2] The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On October 30, 2018, the Court entered an order authorizing the Debtors to employ Nelson Hardiman LLP ("Nelson Hardiman") as special healthcare regulatory counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Nelson Hardiman has submitted eight Monthly Applications [Doc. Nos. 828, 879, 1131, 1341, 1596, 1906, 2262, and 2466], none of which have been opposed.

No objections to *Nelson Hardiman, LLP's Second Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period January 1, 2019 through April 30, 2019* [Doc. No. 2774] (the "Application") have been filed. Having reviewed the Application, the Court approves,

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CONT... Verity Health System of California, Inc.

Chapter 11

on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$907,634.10

Expenses: \$3,153.27

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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Verity Health System of California, Inc.

Steven J Kahn

Nicholas A Koffroth

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 14, 2019

Hearing Room 1568

10:00 AM

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Chapter 11

#11.00 HearingRE: [2776] Application for Compensation Second Interim Application For Fees And Expense Reimbursement; Declaration Of John A. Moe, II for Dentons US LLP, Debtor's Attorney, Period: 1/1/2019 to 4/30/2019, Fee: \$3,314,249.88, Expenses: \$43,626.33. (Moe, John)

Docket 2776

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On September 28, 2018, the Court entered an order approving the Debtors' application to employ Dentons US LLP ("Dentons") as its general bankruptcy counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Dentons has submitted eight Monthly Applications [Doc. Nos. 853, 1001, 1178, 1443, 1676, 1956, 2265, and 2473], none of which have been opposed.

No objections to the *Second Interim Application of Dentons US LLP, as Debtors' Counsel, for Fees and Expense Reimbursement for the Period January 1, 2018 through April 30, 2019* [Doc. No. 2776] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and

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CONT... Verity Health System of California, Inc.

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expenses set forth below, which may be paid (to the extent not previously paid)
subject to available cash on hand in the estate:

Fees: \$3,314,249.88

Expenses: \$43,626.33

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Verity Health System of California, Inc.

Steven J Kahn

Nicholas A Koffroth

Chapter 11

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#12.00 HearingRE: [2769] Application for Compensation for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2019 to 4/30/2019, Fee: \$970,706.50, Expenses: \$2,120.18.

Docket 2769

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 14, 2018, the Court entered an order authorizing the Official Committee of Unsecured Creditors (the "Committee") to retain FTI Consulting, Inc. ("FTI") as its financial advisor. Pursuant to the procedures set forth in the Fee Procedures Order, FTI has submitted eight Monthly Applications [Doc. Nos. 869, 870, 1176, 1419, 1677, 1952, 2272, and 2470], none of which have been opposed.

No objections to the *Second Interim Application of FTI Consulting, Inc. for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* [Doc. No. 2769] (the "Application") have been filed. Having reviewed the Application and the *Declaration of Michael Strollo* [Doc. No. 2771] filed in support thereof, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to

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available cash on hand in the estate:

Fees: \$970,706.50

Expenses: \$2,120.18

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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Central District of California
Los Angeles
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Verity Health System of California, Inc.

Nicholas A Koffroth

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#13.00 HearingRE: [2773] Motion to Assume Lease or Executory Contract Debtors' Notice and Motion to Approve Assumption and Assignment of Certain Executory Contract to Silicon Valley Medical Development; Declaration of Richard G. Adcock in Support Thereof

Docket 2773

Tentative Ruling:

8/13/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve Assumption and Assignment of Certain Executory Contract to Silicon Valley Medical Development [Doc. No. 2773] (the "Motion")
 - a) Submission of Signature Page of Declaration of Richard G. Adcock in Support of [Motion] [Doc. No. 2819]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2753, 2762, 2763, 2765, 2766, 2772, 2773, 2776 and 2777 [Doc. No. 2833]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On March 27, 2019, the Court approved the sale of certain assets of medical clinics operated by the Debtors (the "Clinics") to Silicon Valley Medical Development, LLC ("SVMD"). Doc. No. 1919. In connection with the sale, the Court approved the assumption and assignment of multiple executory contracts from the Debtors to SVMD.

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The Debtors move to assume an executory contract between Debtor Verity Medical Foundation (“VMF”) and Medecision, Inc. (the “Medecision Contract”), so that the Medecision Contract can be assigned to SVMD. SVMD deems the Medecision Contract necessary to operate the Clinics purchased in the sale, and has requested assignment of the Medecision Contract.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court “need engage in only a cursory review” of the debtor's decision, and “should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.” *Id.*

Pursuant to § 365(b)(1), if there has been a default in the executory contract to be assumed, the Debtor may not assume the contract unless the Debtor:

- a) cures, or provides adequate assurance that the [Debtor] will promptly cure, such default;
- b) compensates, or provides adequate assurance that the [Debtor] will promptly compensate, a party other than the debtor to such contract ..., for any actual pecuniary loss to such party resulting from such default; and
- c) provides adequate assurance of future performance under such contract or lease.

SVMD has agreed to pay a cure amount of \$13,836.93 as a condition to the assumption and assignment of the Medecision Contract to SVMD. Medecision has not objected to the cure amount. The Court finds that the cure amount satisfies the requirements of § 365(b)(1).

Given that assignment of the Medecision Contract to SVMD will facilitate SVMD's operation of the Clinics purchased from the Debtors, the Court finds that the Debtors have exercised their sound business judgment with respect to the assumption

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and assignment of the Medecision Contract.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 HearingRE: [2772] Application for Compensation Second Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses For the Period From January 1, 2019, Through April 30, 2019 for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 1/1/2019 to 4/30/2019, Fee: \$481,662.28, Expenses: \$9,189.47.

Docket 2772

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 14, 2018, the Court entered an order authorizing the Debtors to employ Pachulski Stang Ziehl & Jones LLP ("PSZJ") as conflicts counsel. Pursuant to the procedures set forth in the Fee Procedures Order, PSZJ has submitted seven Monthly Applications [Doc. Nos. 868, 1113, 1335, 1618, 1854, 2243, and 2426], none of which have been opposed.

No objections to *Pachulski Stang Ziehl & Jones LLP's Second Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period January 1, 2019 through April 30, 2019* [Doc. No. 2772] (the

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Los Angeles
Judge Ernest Robles, Presiding
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"Application") have been filed. Having reviewed the Application, the *Declaration of Elspeth D. Paul* [Doc. No. 2792] filed in support thereof, and the *Notice of Errata* [Doc. No. 2794] to the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$481,662.28

Expenses: \$9,189.47

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 14, 2019

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Verity Health System of California, Inc.

Chapter 11

Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

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#15.00 HearingRE: [2762] Application for Compensation Berkeley Research Group, LLC's Second Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period January 1, 2019 Through April 30, 2019 for Berkeley Research Group LLC, Financial Advisor, Period: 1/1/2019 to 4/30/2019, Fee: \$4,428,565.50, Expenses: \$322,417.56.

Docket 2762

Tentative Ruling:

8/13/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 7, 2018, the Court entered an order approving the Debtors' application to employ Berkeley Research Group, LLC ("BRG") as the Debtors' financial advisor. Pursuant to the procedures set forth in the Fee Procedures Order, BRG has submitted four Monthly Applications [Doc. Nos. 883, 1099, 1203, 1392, 1783, 1958, 2334, and 2438], none of which have been opposed.

No objections to *Berkeley Research Group, LLC's Second Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period January 1, 2019 through April 30, 2019* [Doc. No. 2762]

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 14, 2019

Hearing Room 1568

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Chapter 11

(the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$4,428,565.50

Expenses: \$322,417.56

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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CONT...

Verity Health System of California, Inc.

Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

Chapter 11

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#100.00 Hearing
RE: [775] Motion for order confirming chapter 11 plan Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr. and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service

fr. 4-10-19; 6-11-19; 7-9-19

Docket 775

Tentative Ruling:

8/13/2019

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 682] (the "Plan")
2. Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 728]
3. Notice of Hearing on Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 732]
4. Chapter 11 Ballots [Doc. No. 733]
5. Proof of Service of Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization; Second Amended Chapter 11 Plan of Reorganization; Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization; Ballot; Ballot Letter; Notice of Hearing on Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No.734]

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6. Order Approving Stipulation re Continuance of Hearing on Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 740]
7. Order Granting United States' Ex Parte Application for a Stay of Briefing in Light of Lapse of Appropriations [Doc. No. 748] [Note 1]
8. Order Approving Stipulation re Continuance of Deadlines Related to Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 754]
9. Order Approving Stipulation to Stay Confirmation Hearing on Debtor's Second Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 766]
10. Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 775] (the "Confirmation Brief")
11. Order (1) Modifying Briefing Schedule in Connection with Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization, and (2) Directing Debtor to Give Notice of Amended Dates [Doc. No. 777]
12. Proof of Service of: Order (1) Modifying Briefing Schedule in Connection with Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization, and (2) Directing Debtor to Give Notice of Amended Dates [Doc. No. 779]
13. Qualified Opposition of Valensi Rose, Plc, Holder of an Allowed Administrative Claim, to the Debtor-In-Possession's Motion for an Order Confirming Its Second Amended Chapter 11 Plan of Reorganization [Doc. No. 780] (the "Valensi Opposition")
14. Reply to the Opposition of Valensi Rose, PLC to Confirmation of Debtors' Second Amended Chapter 11 Plan of Reorganization [Doc. No. 783] ("Debtor's Reply")
15. Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator [Doc. No. 787]
16. Order Continuing Chapter 11 Plan Confirmation Hearing [Doc. No. 788]
17. Third Stipulation to Continue Hearing on Confirmation of Debtors' Second Amended Chapter 11 Plan [Doc. No. 799]
18. Order Approving Third Stipulation to Continue Hearing on Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 802]
19. Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims and Interests and Granting Certain Other Related Relief (5908 ½ Fayette Street, Los Angeles, CA 90042) [Doc. No. 806]

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CONT... Monge Property Investments, Inc. Chapter 11

20. Status Report Re Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 822]
21. Status Report Re Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 826]

I. Facts and Summary of Pleadings

Debtor-in-possession, Monge Property Investments, Inc. (the "Debtor"), filed this voluntary chapter 11 case on May 31, 2012 (the "Petition Date"). The Debtor now seeks confirmation of its *Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 682] (the "Plan").

Summary of the Plan

Class 1 – JPMorgan Chase Bank, N.A. – Claim Satisfied in Full

Class 1 consisted of the secured claim of JPMorgan Chase Bank, N.A. ("Chase") in the approximate amount of \$165,121.41, secured by a first-priority lien against 5908 Fayette Street, Los Angeles, CA 90042 (the "Fayette Property"). The Debtor sold the Fayette Property and paid Chase in full on March 14, 2019.

Class 2 – Los Angeles County Treasurer and Tax Collector – Claim Satisfied in Full

Class 2 consisted of the secured claim of the Los Angeles County Treasurer and Tax Collector (the "LACTTC") in the approximate amount of \$59,439.37. The Debtor used proceeds from the sale of the Fayette Property to pay LACTTC in full.

Class 3 – Priority Unsecured Claims – No Claims Exist

Class 3 is designated for holders of certain priority claims specified in §§ 507(a) (3), (4), (5), (6), and (7). The Debtor does not believe any such claims exist.

Class 4 – General Unsecured Claims – Accepts the Plan

Class 4 consists of general unsecured claims totaling \$78,711 that are not entitled to priority under § 507(a). Class 4 claimants will be paid in full in 60 equal monthly installments of \$1,312, commencing on the first day of the first month following the Effective Date. Class 4 is impaired and voted to accept the Plan.

Class 5 – Equity Interests – Unimpaired (Deemed to Accept)

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Class 5 consists of the equity interests in the Debtor. The Plan provides for the sole equity holder to retain his interest in the Debtor. Class 5 is unimpaired and is therefore deemed to accept the Plan.

The Debtor also used the sale proceeds from the Fayette Property to pay the following administrative and priority tax claims: (i) the United States of America, on behalf of the Internal Revenue Service, in the amount of \$210,762, in full satisfaction of Claims 13 and 14; (ii) the LACTTC, in the amount of \$96,104, in full satisfaction of Claims 7 and 12; (iii) the Los Angeles Housing & Community Investment, in the amount of \$37,248, in full satisfaction of Claim 9; (iv) Payne Financial Forensics, in the amount of \$7,205, pursuant to the Court's Order approving this applicant's fees (Doc. No. 699); (v) the Employment Development Department, in the amount of \$5,795.46, in full satisfaction of Claim 15; and (vi) the Franchise Tax Board, in the amount of \$11,502, in full satisfaction of Claim 10.

On June 21, 2019, the Court entered an order approving the Debtor's sale of real property located at 5908 ½ Fayette Street, Los Angeles, CA 90042 [Doc. No. 806]. The Debtor states that the sale closed on August 1, 2019 and the Debtor used the sale proceeds to pay Valensi Rose's administrative claim in full. Therefore, the only remaining administrative claim is the claim of Debtor's counsel, Resnik Hayes Moradi LLP ("RHM"), which the Debtor proposes to pay in full following Court approval.

As of the date of this tentative ruling, there are no pending oppositions to confirmation of the Plan.

II. Findings of Fact and Conclusions of Law

A. Preliminary issue

In support of Confirmation, the Debtor submitted the Declaration of Roksana D. Moradi-Brovia (the "Moradi-Brovia Decl."), [Doc. No. 775]. Ms. Moradi-Brovia states that she only received a single ballot in connection with confirmation of the Debtor's Plan and attached a copy of that ballot as Exhibit A. The single ballot was filed by Class 4 claimant Jesus Navarro and cast in favor of the Plan (the "Navarro Ballot"). However, the Navarro Ballot is dated March 15, 2019, despite the fact that

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the front page of the ballot unambiguously states: "If your ballot is not received by the proponent's attorney on or before 9/24/2018, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan." The Court has reviewed the record and has been unable to locate any order extending the voting deadline.

Neither the Debtor, nor any other interested party, has raised this issue. However, unless this Court deems the Navarro Ballot timely, the Debtor will have failed to have obtained acceptance of an impaired consenting class and the Court must deny confirmation of the Debtor's Plan.

Bankruptcy Rule 3017(c) states that "[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims or interests may accept or reject the plan" Fed. R. Bankr. P. 3017(c). "Once the date for filing an acceptance or rejection of the plan has been fixed, a creditor must accept or reject the plan within this time limit, or move the court to permit [the] late filing where failure to file timely was the result of excusable neglect." *In re Ekstrom*, 2010 Bankr. LEXIS 982, at *44-45 (Bankr. D. Ariz. Mar. 23, 2010) (citing *In re Paul*, 101 B.R. 228 (Bankr. S.D. Cal. 1989)). In determining whether excusable neglect exists, courts consider a broad range of factors including: (1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the creditor acted in good faith; and (5) whether clients should be penalized for their counsel's mistake or neglect. *In re Paul*, 101 B.R. at 230-31 (citing *In re Dix*, 95 B.R. 134, 138 (B.A.P. 9th Cir. 1988)).

In this case, the voting deadline was set for September 24, 2018 and there has been no formal request to allow the late-filed Navarro Ballot. However, since it appears that the only remaining class of claimants is Class 4 general unsecured creditors and the Debtor has proposed a 100% Plan, the Court finds that it is in the best interests of creditors and the Debtor to treat the Debtor's Confirmation Brief as a request to allow the Navarro Ballot.

Applying the *Dix* factors, the Court finds good cause exists to allow the Navarro Ballot. First, the Debtor will not be prejudiced if the Court were to deem the Navarro Ballot timely but would be prejudiced if the Court declines to do so. Additionally,

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because of unanticipated delays resulting from the Debtor's efforts to sell real property that was necessary to fund the Plan, the confirmation hearing has been continued several times. Therefore, even though the delay does not appear to have been beyond Mr. Navarro's control, such delay has not resulted in any detriment to the administration of this case. The Court also has no reason to find that Mr. Navarro acted in bad faith.

Based upon the foregoing, the Court finds that sufficient excusable neglect exists to allow the late-filed Navarro Ballot to be counted.

B. The Plan Complies With All Applicable Provisions of 11 U.S.C. § 1129

As set forth below, the Court finds that the Plan complies will all applicable provisions of § 1129. The Plan is confirmed.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

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The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

The Plan appropriately designates classes of claims and interests. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies which classes are impaired and which classes are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment of impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's

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implementation."

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- The Plan will be funded by sale proceeds from the following sources:
- i. sale proceeds generated from the sale of the Debtor's interest in real property located at 5908 Fayette Street, Los Angeles, 90042 and 5908 ½ Fayette Street, Los Angeles, CA 90042; [Note 2]
 - ii. collection of rental income from real property located at 942-44 Marine Avenue, Wilmington, CA 90744; and
 - iii. funds on hand in Debtor's Debtor-in-possession bank accounts.

The Debtor anticipates that all remaining allowed administrative claims will be paid by the Effective Date. The Debtor submitted evidence in support of its ability to adequately implement the Plan, in the form of income and expense projections, which are attached as Exhibit B to its Disclosure Statement. The proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Plan specifies that the Debtor's bylaws will be amended to include the requisite language set forth above. The Plan satisfies § 1123(a)(6).

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan does not contain any provision with respect to the selection of officers and directors. The Plan satisfies § 1123(a)(7).

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10. Section 1123(a)(8)

Section 1123(a)(8), which imposes certain requirements upon individual debtors, is inapplicable in this case.

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Debtor has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 729]);
- 2) Obtained Court approval of the employment of professional persons (*see* Doc. Nos. 89, 90, 230, 232, 286, 323, 335, 400, 416, 422, 640, 675); and
- 3) Filed monthly operating reports.

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Debtor has complied with the requirements of the Code throughout this case. The Plan satisfies § 1129(a)(3).

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject

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to the approval of, the court as reasonable."

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The Plan provides that all professional fees are subject to review by the Court. The Plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses that the Debtor's post-confirmation management will remain the same as the Debtor's pre-confirmation management. The Plan satisfies § 1129(a)(5).

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1 and 2 have been paid in full. Class 3 was designated as priority unsecured claims, but the Debtor does not believe that any such claims exist. Therefore, the only remaining impaired class is Class 4, which consists of general

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unsecured creditors whose claims total approximately \$78,711. Class 4 has voted to accept the Plan. *See* Exhibit A to Moradi-Brovia Decl. [Doc. No. 775]. Accordingly, all classes have either accepted the Plan or have been paid in full. The Plan satisfies § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

Classes 1 and 2 have been paid in full. Class 3 was designated as priority unsecured claims, but the Debtor does not believe that any such claims exist. Class 4 is impaired and has voted to accept the Plan. *See* Exhibit A to Moradi-Brovia Decl. [Doc. No. 775]. All classes have either accepted the Plan or have been paid in full. The Plan satisfies § 1129(a)(8).

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all outstanding allowed administrative and priority claims in full on or before the Effective Date. The Plan proposes to pay administrative fees owing to its bankruptcy counsel, RHM, as soon as those fees are approved by the Court and RHM has agreed to this treatment. The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Class 4 consists of non-insider general unsecured claims, is impaired, and has voted to accept the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to

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find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtor submits that it has sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon its review of the budget projections included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

Section 1129(a)(16) is inapplicable in this case.

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SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, does not apply. All impaired classes have either been paid in full or have accepted the Plan.

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

III. Conclusion

For the reasons set forth above, the Plan is CONFIRMED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Stipulation [Doc. No. 746] and Order state reference the hearing on the Debtor's Motion for Approval of Disclosure Statement, but this appears to be in error.

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The Stipulation and Order should have instead referenced continuance of the *Confirmation Hearing* and applicable briefing deadlines.

Note 2: The Debtor has already sold both properties and used the sale proceeds to satisfy a number of claims.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#101.00 Hearing re Confirmation of Debtors First Amended Chapter 11 Plan

fr. 4-10-19; 7-17-19

Docket 0

*** VACATED *** REASON: Cont'd to 9/4/2019 at 11:00 a.m.

Tentative Ruling:

4/9/2019

The Court will require the Debtor to make a few minor amendments to the Disclosure Statement, as discussed below. Otherwise, the Court finds that the Disclosure Statement contains adequate information.

Pleadings Filed and Reviewed

1. Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 69] (the "Disclosure Statement")
2. Debtor's Chapter 11 Plan of Reorganization [Doc. No. 70] (the "Plan")
3. Notice of Hearing on Adequacy of Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 71]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns three residential real properties: (i) 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property"); (ii) 5935 Playa Vista Dr., #414, Playa Vista, CA 90094 (the "Playa Vista Property"); and (iii) 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties"). The Debtor filed this case to address several defaulted loans secured by

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liens on the Properties and to reorganize its affairs.

The Debtor seeks an order approving the adequacy of its Disclosure Statement. The Disclosure Statement explains the reasons for filing, describes the Debtor's assets and their values, and provides a summary of significant post-petition events. The Disclosure Statement describes the Debtor's proposed plan of reorganization, which will be funded by additional income generated from increased rents from the Virgil and Playa Vista Properties. The Debtor proposes the following classification scheme and treatment:

- **Class 1:** Secured claim of Seterus, Inc., as the authorized sub-servicer for Federal National Mortgage Association ("Seterus"). Seterus holds the first priority lien against the Virgil Property in the amount of \$882,107. The Debtor proposes to pay Seterus's claim in full, with 5.5% interest amortized over 30 years. Seterus will be repaid in two phases. The Debtor will make 120 monthly payments to Seterus in the amount of \$5,009. The Debtor will also deposit \$982 a month into a tax impound account on account of this claim. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Seterus's claim. Seterus's claim is impaired and it is entitled to vote on the Plan.
- **Class 2:** Secured claim of Errol Gordon ("Gordon"). Gordon holds the second priority lien against the Virgil Property in the amount of \$50,000. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$209. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.
- **Class 3:** Secured claim of Gordon. Gordon also holds the second priority lien against the Senford Property in the amount of \$300,701. The Debtor proposes to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon's claim will be repaid in two phases. The Debtor will make 120 monthly payments to Gordon in the amount of \$1,257. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he is entitled to vote on the Plan.

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- **Class 4**: Secured claim of Los Angeles County Treasurer and Tax Collector (the "LACTTC"). LACTTC holds a property tax lien against the Senford Property in the amount of \$97,939. The Debtor proposes to pay LACTTC's claim in full, with 18 interest, plus redemption penalty interest and any other fees, costs, or charges LACTTC is entitled to. The Debtor will make 60 monthly payments to LACTTC in the amount of \$2,487. LACTTC's claim is impaired and it is entitled to vote on the Plan.
- **Class 5**: Secured claim of Mr. Cooper/Nationstar ("Mr. Cooper"). Mr. Cooper holds the first priority lien against the Playa Vista Property in the amount of \$857,177. The Debtor proposes to pay Mr. Cooper's claim in accordance with the applicable loan obligations. As such, Mr. Cooper's claim is unimpaired and Mr. Cooper is not entitled to vote on the Plan.
- **Class 6**: Secured claim of Playa Vista Parks HOA ("PVP"). PVP holds an HOA lien against the Playa Vista Property in the amount of \$70,080. The Debtor proposes to pay PVP's claim in full, at 4% interest amortized over 40 years. PVP's claim will be repaid in two phases. The Debtor will make 120 monthly payments to PVP in the amount of \$323. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy PVP's claim. PVP's claim is impaired and it is entitled to vote on the Plan.
- **Class 7**: Secured claim of Villa d'Este HOA ("Villa"). Villa holds an HOA lien against the Playa Property in the amount of \$31,855. The Debtor proposes to pay Villa's claim in full, with 4% interest amortized over 40 years. The Debtor will make 120 monthly payments to Villa in the amount of \$323. Villa's claim is impaired and it is entitled to vote on the Plan.
- **Class 8**: Priority unsecured claims. The Debtor does not believe any priority unsecured claims exist.
- **Class 9**: General unsecured claims. The Debtor estimates that general unsecured claims total approximately \$723. These claims will be paid in full by the first day of the first month following the Effective Date. The Debtor submits that this proposed treatment renders general unsecured claims unimpaired and, accordingly, they would be deemed to accept the Plan and not entitled to vote.
- **Class 10**: Interest holders. Debtor's owners will retain their ownership interest in the Debtor.

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The Debtor also proposes to pay the Franchise Tax Board's priority claim within 36 months by making monthly payments of \$77. Resnik Hayes Moradi has consented to Debtor's proposal to repay its administrative claim, in an amount approved by this Court, by making monthly payments in the amount of \$1,000 until its claim is satisfied.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees;

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(13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Subject to the minor amendments discussed below, the Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement describes (1) the factors precipitating the Chapter 11 filing, (2) significant events that occurred during the Chapter 11 case, (3) the classification structure of the Plan, (4) a disclaimer, (5) risk factors, and (6) the means for execution of the Plan.

However, the Court will require the Debtor to file an amended disclosure statement and plan by no later than **April 24, 2019** to address the following two issues:

First, the Debtor proposes an Effective Date that is "the first business day that is fourteen (14) calendar days after the entry of the order confirming the Plan, with payment beginning by the first day of the following month." Disclosure Statement, p.5:18-20. This language is problematic because certain confirmation requirements mandate that effective date payments occur on the Effective Date. For example, for the Court to determine that Class 9 general unsecured claims are unimpaired, the Debtor must pay all claims in full on the Effective Date, rather than the proposed "first day of the month following the Effective Date." Therefore, the Debtor is directed to amend the language so that payments begin on the Effective Date.

Second, the Court notes that the Debtor's financial projections in Exhibit B state that they are for a period of "5 years," but only contain 12 months of projections. The Debtor is directed to file an amended Exhibit B with the full 5-year projections.

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Although the following are plan confirmation issues, the Debtor should also be prepared to present further evidence in support its confirmation brief regarding the feasibility of its proposed Plan. In its current form, the Plan proposes payment of certain obligations for months two through five, but the Debtor's projections set forth in Exhibit B to the Disclosure Statement reflect negative net monthly income for those months. The Court also notes the Debtor's proposed Plan will be funded, in part, from contributions from Sandra McBeth. As evidence of Ms. McBeth's financial ability to make such contributions, the Debtor attached Exhibit E, which purports to be copies of bank statements showing deposits and income from her employment as a real estate consultant. *See* Declaration of Sandra McBeth & Exhibit E. However, the bank accounts belong to Playa Vista Realty Group, Inc., and without more information about whether the statements capture all of Ms. McBeth's monthly income and expenses, the Court does not believe Exhibit E is sufficient evidence of Ms. McBeth's financial ability to fund the proposed Plan.

The following dates will apply:

- 1) A hearing will be held on the confirmation of the Debtor's First Amended Chapter 11 Plan (the "Plan") on **July 17, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the First Amended Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **April 26, 2019**. (As ordered above, the First Amended Disclosure Statement containing minor amendments described above must be filed by **April 24, 2019**.)
- 3) **June 14, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.
- 4) **June 26, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the

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requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.

- 5) **July 3, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **July 10, 2019** is fixed as the last day on which the Debtor may file and serve its reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:19-13797 Liboria Zavalza

Chapter 11

#102.00 Hearing
RE: [15] Motion for Setting Property Value Re: 4053 & 4053A Randolph Street,
Huntington Park, CA 90255 (Lindsey, Crystle)

fr. 6-4-19

Docket 15

Tentative Ruling:

8/13/2019

Having reviewed the competing appraisals submitted by the Debtor and the Bank, the Court finds that for plan treatment purposes, the Property has a value of \$465,000.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 15] (the "Valuation Motion")
2. Opposition to Debtor's Motion for Order Determining Value of Collateral [Doc. No. 21] (the "Opposition")
3. Stipulation to Continue the Hearing on Debtor's Motion for Order Determining Value of Collateral [Doc. No. 23]
4. Order on Stipulation to Continue the Hearing on Debtor's Motion for Order Determining Value of Collateral [Doc. No. 24]
5. Supplemental Opposition to Debtor's Motion for Order Determining Value of Collateral [Doc. No. 58]
6. As of the date of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Liboria Zavalza (the "Debtor") filed this voluntary chapter 11 case on April 3, 2019 (the "Petition Date"). The Debtor has an interest in real property located at 4053 & 4053(A) Randolph Street, Huntington Park, CA 90255 (the "Property"). The Property is encumbered by a First Deed of Trust (the "DOT") in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc.,

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Asset-Backed Certificates, Series 2007-3 (the "Bank"). The Bank asserts a secured claim against the Property in the amount of \$1,185,616.25. *See* Proof of Claim 3-1 ("Claim 3").

The Debtor seeks an order valuing the Property at \$460,000, in order to bifurcate the Bank's claim for plan treatment purposes (the "Valuation Motion"). In support of the claimed valuation, the Debtor submits an *Appraisal Report* prepared by Perez & Associates (the "Debtor Appraisal"). Attached to the Debtor Appraisal is a *Construction Bid Summary* prepared by EC Precise Designs (the "Construction Summary"). According to the Construction Summary, the Property requires repairs in the approximate amount of \$243,600.

On May 21, 2019, Ocwen Loan Servicing, LLC, the authorized loan servicing agent for the Bank (together, the "Bank"), filed a timely opposition requesting at least a 60-day continuance to afford it an opportunity to obtain a verified full interior appraisal. The Bank stated that it recently obtained a Broker's Price Opinion, dated February 26, 2019, that valued the Property at \$538,000. Opposition, Ex. A. Accordingly, the Bank believed there may be significantly more equity in the Property than alleged by the Debtor.

On June 3, 2019, the Debtor and Bank stipulated to continue the hearing to allow time for the Bank to conduct its own appraisal [*see* Doc. Nos. 23 & 24]. On July 31, 2019, the Bank submitted a timely supplemental opposition with an *Appraisal Report* prepared by Reliant Appraisal that estimates that the value of the Property is \$465,000 [Doc. No. 58] (the "Bank Appraisal"). Accordingly, the Bank requests the Court enter an order valuing the Property at no less than \$465,000.

As of the preparation of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

Section 506(a)(1) provides in relevant part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an

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unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a)(1).

Based on the Court's review of the competing appraisals, the Court finds the Bank Appraisal slightly more persuasive because it is dated closer in time to plan confirmation and the Debtor Appraisal takes into account repairs that appear to be slightly inflated. For example, the Debtor's Construction Summary contemplates installation of solid maple doors, high-end self-closing drawers and cabinets, and brand-named fixtures, among other things. In other words, it appears that a number of the repairs contemplated by the Construction Summary would upgrade the Property's interior to a level that exceeds the average quality demanded by the market. As a result, the Debtor's inflated repair estimate implies that the Property is in worse condition than it actually is and, in turn, likely resulted in an undervaluing of the Property.

Therefore, the Court finds that for plan treatment purposes, the Property has a value of \$465,000.

III. Conclusion

For the reasons set forth above, the Court finds that for plan treatment purposes, the Property has a value of \$465,000.

The Bank is directed to lodge a proposed order incorporating this tentative ruling within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Liboria Zavalza

Chapter 11

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron
Crystle Jane Lindsey

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11:00 AM

2:18-22630 Fabricio Mejia

Chapter 7

Adv#: 2:19-01024 Amy's Pastry, Inc. v. Mejia et al

#103.00 HearingRE: [17] Motion Creditors Notice Of Motion And Motion For Authority To Compromise With Debtor Fabricio Mejia Under Rule 901; Request For Dismissal Of All Remaining Causes Of Action; Declaration Of Eric Bensamochan, Esq In Support Thereof (Bensamochan, Eric)

Docket 17

Tentative Ruling:

8/13/2019

For the reasons set forth below, the Motion is GRANTED and the Complaint is DISMISSED.

Pleadings Filed and Reviewed:

- 1) Creditor's Notice of Motion and Motion for Authority to Compromise with Debtor Fabricio Mejia Under Rule 9019 [Doc. No. 17] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Fabricio Mejia and Ana Gloria Mejia (the "Debtors") filed a voluntary Chapter 7 petition on October 26, 2018. On January 25, 2019, Amy's Pastry, Inc. (the "Plaintiff") filed an *Adversary Complaint to Determine Nondischargeability of Debt (Section 523) and Objection to Discharge (Section 727)* (the "Complaint") against the Debtors. The Complaint asserts claims under § 523(a)(2)(A) and (a)(6) and § 727(c)(1) and (a)(4)(A). On May 22, 2019, Plaintiff dismissed Debtor/Defendant Ana Gloria Mejia, with prejudice.

Plaintiff moves for approval of a settlement agreement with Debtor/Defendant Fabricio Mejia (the "Settlement Agreement"). The Settlement Agreement was reached in connection with a global mediation that also resolved workers' compensation and wage and hour claims against the Debtors. The Debtors have agreed to pay \$8,000 to resolve all issues. Of this amount, \$2,500 is attributable to settle the instant Complaint against Debtor/Defendant Fabricio Mejia.

No opposition to the Settlement Agreement has been filed.

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Chapter 7

II. Findings and Conclusions

Bankruptcy Rule 7041 provides in relevant part: "a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper."

The Chapter 7 Trustee (the "Trustee") and the United States Trustee (the "UST") have received notice of the settlement of the § 727 claims. The Trustee and the UST have not objected to the Settlement Agreement, and have not sought authorization to intervene in the action to continue to prosecute the § 727 claims against Debtor/Defendant Fabricio Mejia.

The Court finds that the Settlement Agreement, under which Debtor/Defendant will pay \$2,500 in exchange for dismissal of the § 523 claims, is appropriate. The majority of the wrongful conduct alleged in the Complaint pertains to the § 523 claims, not the § 727 claims. This is not a situation in which the Debtor/Defendant has proffered a settlement payment in order to buy a discharge.

Because no party has sought authorization to intervene to continue to prosecute the § 727 claims, those claims will also be dismissed.

Based upon the foregoing, the Settlement Agreement is APPROVED and the Complaint is DISMISSED. Within seven days of the hearing, Plaintiff shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fabricio Mejia

Represented By
Jennifer Ann Aragon - SUSPENDED -

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Chapter 7

Defendant(s):

Fabricio Mejia Pro Se

Ana Gloria Mejia Pro Se

Joint Debtor(s):

Ana Gloria Mejia Represented By
Jennifer Ann Aragon - SUSPENDED -

Plaintiff(s):

Amy's Pastry. Inc. Represented By
Eric Bensamochan

Trustee(s):

Wesley H Avery (TR) Pro Se

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10:00 AM

2:19-17218 Mark Anthony Contreras

Chapter 7

#1.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Nissan Frontier, VIN 1N6AD0ER0JN725521 . (Wang, Jennifer)

Docket 7

Tentative Ruling:

8/15/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Mark Anthony Contreras

Represented By
Brad Weil

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:19-17342 Carlos Enrique Guerra

Chapter 7

#2.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 LEXUS IS200 with Proof of Service. (Loftis Pacheco, Erica)

Docket 7

Tentative Ruling:

8/15/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The Court has reviewed the Debtor's Limited Opposition [Doc. No. 11], pursuant to which the Debtor states that he opposes the Motion only to the extent that it seeks a specific finding that the Debtor was involved in a scheme to hinder, delay or defraud creditors because the Debtor has no actual possession of the Property. The failure of the trustee and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

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CONT... Carlos Enrique Guerra

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Carlos Enrique Guerra

Represented By
Lionel E Giron

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:19-15666 Kevin James Smith

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 JEEP RENEGADE; VIN: ZACCJBCT0FPB50706 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

8/15/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 19, 2019

Hearing Room 1568

10:00 AM

CONT... Kevin James Smith

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin James Smith

Represented By
Matthew D Resnik

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 19, 2019

Hearing Room 1568

10:00 AM

2:19-18261 Edgar Roberto Calderon and Erika Sanchez

Chapter 7

#4.00 Hearing
RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8513 Vicki Dr., Whittier, CA 90606

fr: 8-5-19

Docket 7

Tentative Ruling:

8/15/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this judge's procedures [*see* Doc. Nos. 12 & 13]. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on June 25, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Edgar Roberto Calderon and Erika Sanchez

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

8/1/2019

For the reasons set forth herein, CONTINUE HEARING to **August 19, 2019 at 10:00 a.m.** The Motion was not served on the Debtor by posting or personal service as required by Judge Robles's self-calendaring procedures for residential unlawful detainer actions filed on less than 21 days' notice.

By no later than August 7, 2019, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Notice on all interested parties, including on the Debtor and Debtor's attorney via first class mail; and (iii) file a proof of service evidencing compliance with this ruling. Failure to timely comply with any of the foregoing will result in denial of the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Edgar Roberto Calderon and Erika Sanchez Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Edgar Roberto Calderon

Represented By
Harriet L. Goldfarb

Joint Debtor(s):

Erika Sanchez

Represented By
Harriet L. Goldfarb

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 20, 2019

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10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [55] Motion to Amend (related document(s)1 Complaint) Notice Of Motion And Motion For Leave To Modify Scheduling Order To Permit Filing Of First Amended Complaint; Memorandum Of Points And Authorities; Declarations Of Thomas J. Eastmond And Linda Lee In Support with proof of service

fr. 4-23-19; 5-7-19; 7-17-19

Docket 55

***** VACATED *** REASON: CONTINUED 9-17-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

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CONT... JW Wireless Inc.

Chapter 7

Shaigan Ben Her, an individual

Represented By
Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare and Medi-Cal Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19

Docket 0

***** VACATED *** REASON: Cont'd to 9/24/2019 at 10:00 a.m.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
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Tuesday, August 20, 2019

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#100.00 Hearing
RE: [511] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

fr. 4-16-19; 6-18-19

Docket 511

Tentative Ruling:

8/19/2019

The Debtor shall appear and supply the Plan Administrator with certain final figures to be included in the Final Dismissal Order. If this information has already been provided to the Plan Administrator, no appearances will be required. The Court is prepared to enter the Final Dismissal Order, provided that the United States Trustee has no objection.

Pleadings Filed and Reviewed:

- 1) Declaration of Bradley J. Sharp in Support of Entry of Final Order (1) Dismissing Chapter 11 Case, (2) Dismissing Adversary Proceeding, and (3) Approving Distribution to Liberty Asset Management Corporation [Doc. No. 531]
- 2) Papers filed in connection with June 18, 2019 Hearing:
 - a) Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 511] (the "Motion")
 - b) Opposition to Motion to Convert, Dismiss or Appoint a Chapter 11 Trustee Filed by the Office of the United States Trustee [filed by the Plan Administrator for Liberty Asset Management Corporation] [Doc. No. 517]
 - i) Declaration of Bradley D. Sharp in Support of Opposition to Motion to Convert, Dismiss or Appoint a Chapter 11 Trustee Filed by the Office of the United States Trustee [Doc. No. 518]

I. Facts and Summary of Pleadings

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CONT... Crystal Waterfalls LLC

Chapter 11

On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Doc. No. 478] (the "Approval Order"). The Approval Order provides that the structured dismissal of the Debtor's Chapter 11 will occur through a two-step process:

- 1) First, within ten days of entry of the Approval Order, the Debtor shall set aside the sum of \$3 million (the "Reserve Fund"), to be maintained in the client-trust account of the Debtor's counsel. The Reserve Fund shall be used to pay, among other claims, professional fees, sums owing on account of the Debtor's final tax returns, and outstanding fees owed to the UST.
- 2) Second, upon presentation of evidence by the Liberty Committee that various conditions precedent (the "Conditions Precedent") have been satisfied, the case shall be dismissed.

On February 7, 2019, the United States Trustee (the "UST") filed a motion seeking to dismiss the case, pursuant to § 1112(b) (the "Motion"). The hearing on the Motion was initially set for April 16, 2019, but was continued pursuant to a stipulation between the Debtor and the UST that was approved by the Court. The UST sought dismissal because more than seven months had passed since entry of the Approval Order, and because the Debtor was delinquent on quarterly fees and had not filed its December 2018 Monthly Operating Report.

On June 18, 2019, the Court conducted a hearing on the Motion. At the hearing, the Debtor advised that it was anticipated that all of the Conditions Precedent set forth in the Approval Order would be satisfied shortly, and that the case could be dismissed. The Court ordered the parties to lodge a stipulated order of dismissal and stated that if such an order had not been lodged by this continued hearing date, it reserved the right to levy sanctions.

On August 16, 2019, Bradley D. Sharp, the Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 for Liberty Asset Management Corporation (the "Plan Administrator"), submitted a declaration containing a draft *Final Order (1) Dismissing Chapter 11 Case, (2) Dismissing Adversary Proceeding and (3) Approving Distributions to Liberty Asset Management Corporation* (the "Final Dismissal Order"). The Plan Administrator states that the Debtor has not responded to his request to provide certain final figures to be included in the Final Dismissal Order.

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CONT... Crystal Waterfalls LLC

Chapter 11

II. Findings and Conclusions

The Debtor shall appear and be prepared to provide the Plan Administrator with the final figures to be included in the Final Dismissal Order. The Court is prepared to enter the Final Dismissal Order, provided that all outstanding quarterly fees have been paid to the United States Trustee (the "UST"), and provided that the UST has no objection to entry of the Final Dismissal Order.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

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2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#1.00 Hearing
RE: [19] Motion To Dismiss Will Be Treated As Motion For Summary Judgment

(fr: 7-10-19)

Docket 19

Tentative Ruling:

8/20/2019

The parties were previously notified by the Court that Shellpoint's Motion to Dismiss would be treated as a motion for summary judgment. For the reasons set forth below, the Court will enter judgment in Shellpoint's favor.

Pleadings Filed and Reviewed

1. Complaint for Breach of Contract, Declaratory Judgment and Injunction [Adv. Doc. No. 1] (the "Complaint")
2. Defendant's Motion to Dismiss the Adversary Complaint Under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 [Adv. Doc. No. 19] (the "Motion to Dismiss")
 - a. Defendant's Request for Judicial Notice in Support of Motion to Dismiss the Adversary Complaint Under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 [Adv. Doc. No. 20] (the "Shellpoint RJN")
 - b. Defendant's Notice of Motion to Dismiss the Adversary Complaint Under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 [Adv. Doc. No. 21]
3. Opposition by Plaintiffs to Shellpoint Mortgage Services LLC's Motion to Dismiss Adversary Complaint [Adv. Doc. No. 26] (the "Opposition")
 - a. Plaintiffs' Request for Judicial Notice in Opposition to Defendant Shellpoint Mortgage Services LLC's Motion to Dismiss the Adversary Complaint [Adv. Doc. No. 27] ("Debtors' RJN")
4. Reply to Opposition to Motion to Dismiss the Adversary Complaint Under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 [Adv. Doc. No. 30] (the "Reply")
5. Plaintiffs' Response to the Reply to the Opposition Filed by Defendant Shellpoint

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CONT...

Sergio Miranda

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- in re Motion to Dismiss Adversary Complaint [Adv. Doc. No. 31] (the "Unauthorized Sur-Reply")
6. Order (1) Notifying Parties That Motion to Dismiss Will be Treated as Motion for Summary Judgment; (2) Setting Deadlines for Parties to Submit any Additional Materials Pertinent to the Motion; and (3) Continuing Hearing Date [Adv. Doc. No. 36]
 7. Plaintiffs' Memorandum of Points and Authorities in Opposition to the Motion for Summary Judgment by Shellpoint Mortgage Services LLC [Adv. Doc. No. 40] (the "Debtor's Supplemental Opposition")
 - a. Plaintiffs' Statement of Controverted Facts and Genuine Issues of Law in Opposition to the Motion for Summary Judgment by Shellpoint Mortgage Services LLC [Adv. Doc. No. 41]
 - b. Declaration of Elizabeth Akintimoye [Adv. Doc. No. 42]
 - c. Declaration of Sergio Lopez Miranda and Esmeralda Miranda in Opposition to Motion for Summary Judgment by Shellpoint Mortgage Services LLC [Adv. Doc. No. 43]
 - d. Proof of Service [Adv. Doc. No. 44]
 8. Supplemental Memorandum of Points and Authorities in Support of Motion for Summary Judgment [Adv. Doc. No. 45] (the "Shellpoint's Supplemental Reply")
 - a. Separate Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment [Adv. Doc. No. 46]
 - b. Declaration in Support of Motion for Summary Judgment [Adv. Doc. No. 47]
 - c. Defendant's Amended Request for Judicial Notice in Support of Motion for Summary Judgment [Adv. Doc. No. 48]
 9. Supplemental Declaration of Sergio Miranda in Opposition to the Motion for Summary Judgment by Shellpoint Mortgage Servicing LLC [Adv. Doc. No. 49] (the "Unauthorized Miranda Declaration")

I. Facts and Summary of Pleadings

Sergio Miranda and Esmeralda Miranda (together, the "Debtors") filed a voluntary chapter 11 petition (the "Bankruptcy Case" or "Main Case") on April 24, 2013 (the "Petition Date") [2:13-bk-20738-TD]. On December 6, 2013, the Debtors filed their Chapter 11 Plan of Reorganization [Main Case, Doc. No. 103] (the "Plan"). On August 7, 2014, the Debtors obtained an Order Confirming Chapter 11 Plan of Reorganization [Main Case, Doc. No. 139] (the "Confirmation Order"). On February

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3, 2015, the Court entered an Order Granting Motion for Final Decree [Main Case, Doc. No. 155] and closed the Debtors' case on March 13, 2015.

On February 23, 2019, the Debtors moved to reopen their case to initiate an adversary proceeding to enforce the provisions of their confirmed Plan, which the Court granted by order entered February 27, 2019 [Main Case, Doc. Nos. 161 & 163]. On February 25, 2019, the case was transferred from Judge Thomas B. Donovan to Judge Ernest M. Robles.

Summary of Complaint

On March 31, 2019, the Debtors initiated this adversary proceeding by filing a complaint against Bank of America National Association ("Bank of America") and Shellpoint Mortgage Servicing LLC ("Shellpoint," and together with Bank of America, the "Defendants") asserting claims for breach of contract, declaratory judgment and injunction [2:19-ap-01079-ER, Adv. Doc. No. 1] (the "Complaint").

The allegations of the Complaint are as follows:

- Pre-petition, the Debtors acquired interests in two parcels of real property: (1) 1123 West 119th Street, Los Angeles, CA 90044 (the "1123 Property"); and (2) 1118 West 119th Street, Los Angeles, CA 90044 (the "1118 Property," and together with the 1123 Property, the "Properties"). Complaint, ¶¶ 8-9. Bank of America funded the loans for both Properties and held the promissory notes and deeds of trust against the Properties. *Id.*, ¶ 11.
- The Debtors fell behind on their mortgage payments. *Id.*, ¶ 10. On April 24, 2013, the Debtors filed the Bankruptcy Case to modify their mortgages with Bank of America. *Id.*, ¶¶ 10-11.
- Bank of America filed proofs of claim in the Bankruptcy Case in support of both of its loans. *Id.*, ¶ 12.
- On April 24, 2013, the Debtors filed a chapter 11 plan of reorganization (the "Plan"). *Id.*, ¶ 13. The creditors who were entitled to vote on the Plan voted and on August 7, 2014, the Bankruptcy Court entered an order confirming the Plan. *Id.*
- Paragraphs 5a and 5b of the Plan describe the treatment for Defendants' claims regarding the Properties. *Id.*, ¶ 17. Paragraph 5a describes the treatment for the 1118 Property. *Id.* Among other things, Paragraph 5b states that the

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CONT...

Sergio Miranda

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Debtors were responsible for making all escrow payments directly after the effective date of the Plan. *Id.* Paragraph 5b describes the treatment for the 1123 Property and again provides that the Debtors would be responsible for direct payment of escrow fees. *Id.*, ¶ 18.

- Post-petition, Bank of America hired Ditech Financial LLC ("Ditech") to service the mortgage on the 1118 Property and the Debtors began making payments to Ditech. *Id.*, ¶ 19.
- After making more than a year of Plan payments to Ditech, Ditech informed the Debtors that they owed escrow fees of \$54,635.64 and corporate advances in the sum of \$140,885.45 in connection with the 1118 Property. *Id.*, ¶ 20.
- During the pendency of the Bankruptcy Case, and before the Plan was confirmed, Bank of America appointed Nationstar Mortgage LLC ("Nationstar") to service the mortgage for the 1123 Property and the Debtors began making payments to Nationstar. *Id.*, ¶ 21. In the later part of 2018, Shellpoint informed the Debtors that it was the new servicer of the loan and the Debtors have been making payments to Shellpoint ever since. *Id.*
- Post-confirmation, despite the fact that they continued making payments in accordance with the Plan, the Debtors received mortgage statements that did not reflect the terms of the confirmed Plan in several respects. *Id.*, ¶ 22.
- The Debtors' attempts to obtain the servicers' compliance with the terms of the Plan have proved abortive. *Id.*, ¶ 22.

In support of the Complaint, the Debtors attached the Plan (Ex. 1) and the Order confirming the Plan (Ex. 2).

Based on the foregoing allegations, the Debtors assert that they are entitled to damages arising from the Defendants' alleged breach of contract ("Claim One"). The Debtors allege that the Plan constituted a written contract between the Debtors and Defendants, that the Debtors have substantially performed all of the terms required of them, that the Defendants breached the contract, and that the Debtors have suffered harm as a result of Defendants' breach.

The Debtors also seek entry of a declaratory judgment in their favor finding that the Defendants are bound by the Plan and ordering the Defendants to comply with the terms of the Plan ("Claim Two").

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Chapter 11

Summary of Shellpoint's Motion to Dismiss

On June 7, 2019, Shellpoint moved to dismiss the Complaint without leave to amend pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. First, Shellpoint argues that the Debtors' claims are barred by the doctrine of *res judicata*. Shellpoint states that this is the Debtors' second attempt to relitigate facts and claims that have already been adjudicated pursuant to a final judgment on the merits. Specifically, Shellpoint states as follows:

- On December 13, 2017, the Debtors filed a First Amended Complaint in the Superior Court of the State of California, County of Riverside (the "State Court") (Case No. RIC1708696) (the "State Court Complaint" or "State Court Action") against, among others, Nationstar Mortgage LLC ("Nationstar") asserting a breach of contract claim for its alleged failure to adhere to the terms of the Debtors' Plan.
- Nationstar appeared as the servicer for the loan in reference to the 1123 Property.
- On August 1, 2018, Nationstar's motion for summary judgment was granted and Nationstar was dismissed from the State Court Case.

Shellpoint further states that on or about December 17, 2018, Nationstar executed an Assignment of Deed of Trust transferring the beneficial interest in the 1123 Property's deed of trust (the "1123 DOT") to Wilmington Savings Fund Society, d/b/a Christiana Trust, as Owner Trustee on Behalf of CSMC 2018-RPL6 Trust ("Wilmington"), and that Shellpoint is the current servicer of the 1123 Property loan. Therefore, Shellpoint argues that the Debtors are barred from asserting the same claims against it because it has privity with Nationstar as the current servicer for Nationstar's successor-in-interest. Shellpoint also argues that issue preclusion applies for similar reasons.

Next, Shellpoint argues that the Complaint fails on the merits. Shellpoint states that on July 11, 2013, Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Countrywide Home Loans, Inc. ("Countrywide") executed an Assignment of Deed Trust transferring the beneficial interest in the 1123 DOT to Nationstar and that the Debtors were aware of this transfer because, before filing their Plan, the Debtors entered into a loan modification agreement with Nationstar. However,

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despite such knowledge, Shellpoint highlights that the Debtors Plan did not classify Nationstar's interest in the 1123 Property and instead continued to list Nationstar's predecessor-in-interest, BAC Home Loans, with respect to any proposed treatment for the 1123 Property. Shellpoint further highlights that the Debtors never notified Nationstar of the bankruptcy case, the Plan, or any other filings within the bankruptcy case. Therefore, Shellpoint argues that the Debtors have failed to identify the existence of a valid enforceable contract against it or otherwise demonstrated that Shellpoint has breached the Plan and caused the Debtors' to incur damages.

Similarly, Shellpoint argues that the Debtors' claim for declaratory relief must also fail because there is no actual or present controversy. Shellpoint also argues that, to the extent the Debtors seek injunctive relief, such claim must also fail because it is a remedy and not a cause of action, and because the Debtors have failed to allege facts demonstrating that they are entitled to such relief.

In support of the Motion to Dismiss, Shellpoint requests the Court take judicial notice of five documents relevant to establishing the applicability of its preclusion arguments and chain of title evidence for the 1123 Property.

Summary of the Debtors' Opposition

The Debtors make the following arguments in opposition to the Motion to Dismiss. First, the Debtors argue that *res judicata* is not applicable because the State Court Action did not involve a final judgment on the merits with respect to Nationstar. The Debtors request that the Court take judicial notice of relevant pleadings filed in the State Court Action to establish that the State Court's decision to grant Nationstar's motion for summary judgment was based on a limited finding that it lacked jurisdiction over the issues. Therefore, the Debtors argue that there is no preclusive effect.

Next, the Debtors argue that contrary to Shellpoint's contentions, the Complaint does adequately plead the asserted claims for relief because under applicable federal pleading standards, the Debtors were only required to allege claims for relief, not causes of action, statutes or legal theories. Therefore, the Debtors argue that Shellpoint has failed to demonstrate that the Complaint should be dismissed for failure to state a claim under Civil Rule 12(b)(6).

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Summary of Shellpoint's Reply

Shellpoint filed a timely reply arguing that the Debtors' Opposition misrepresents the State Court's ruling by arguing that the court dismissed the Complaint on jurisdictional grounds without reaching the merits. Shellpoint acknowledges that the Minute Order has a notation reflecting the parties' discussion on the record about the State Court's jurisdiction, but highlights that the Minute Order also includes the State Court's ultimate findings which states:

Court makes the following orders:

Summary Judgment on 1st Amended Complaint of MIRANDA for Defendant(s) NATIONSTAR MORTGAGE LLC is Granted.

See Debtors' RJN, Ex. C (the "Minute Order").

Shellpoint also highlights that the final order states:

"[a]fter full consideration of the evidence, and the written submissions by the Nationstar and Plaintiffs, the Court finds that there are no triable issues of material fact as to Plaintiffs' First Amended Complaint against Nationstar, and that Nationstar is entitled to judgment as a matter of law."

See Shellpoint RJN, Ex. 2, Judgment in Favor of Defendant Nationstar Mortgage LLC and Against Plaintiffs Sergio Lopez Miranda and Esmeralda Miranda (the "State Court Judgment").

Shellpoint argues that this language is not ambiguous, or only a partial holding, but instead clearly evidences a final ruling on the merits. Finally, Shellpoint highlights that the State Court Judgment provides for Nationstar, as the prevailing party, to recover attorneys' fees and costs and that Nationstar was ultimately awarded its attorneys' fees and costs. Shellpoint argues that under applicable law, Nationstar would not have been considered the "prevailing party" unless the matter was decided on the merits. Therefore, Shellpoint maintains its position that this Court should give full faith and credit to the State Court Judgment and dismiss this Complaint on the grounds that the claims are barred by *res judicata*.

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Shellpoint also argues that even if this Court rules that neither claim or issue preclusion apply, the Complaint should still be dismissed because the Complaint fails to properly plead sufficient allegations to support the asserted claims for relief and because the Debtors' legal theories fail on the merits.

Summary of the Debtors' Unauthorized Sur-Reply

On July 4, 2019, the Debtors filed an unauthorized sur-reply arguing that, pursuant to California Code of Civil Procedure section 437c(g) [**Note 1**], the State Court was required to specify its reasons for granting Nationstar's motion for summary judgment. The Debtors argue that the only evidence in the record that explains the State Court's reasoning for granting summary judgment appears in the Minute Order and highlight the State Court's finding that this Bankruptcy Court has exclusive jurisdiction over the matter. *See* Debtors' RJN, Ex. C.

The Debtors also highlight that in support of Nationstar's request for entry of summary judgment, Nationstar argued that the State Court lacked jurisdiction because this Court retained exclusive jurisdiction. *See* Debtors' RJN, Exs. A & B. Therefore, the Debtors argue that when considered in connection with the Minute Order, it is clear that the State Court entered judgment in Nationstar's favor based solely on a determination that it lacked jurisdiction. The Debtors also argue that even though the State Court entered judgment in Nationstar's favor, the State Court Judgment is not entitled to preclusive effect so as to bar the claims in this action because the limited jurisdictional finding demonstrates that there was no final judgment on the merits.

The Debtors also argue that the fact that Nationstar was awarded attorneys fees and costs does not establish that the State Court Judgment was on the merits as to the Debtors' claims, but only that Nationstar was the prevailing party on the motion for summary judgment. The Debtors argue that this Court may not draw any unsupported inferences from the State Court's findings and must focus on what the Minute Order and State Court Judgment actually state. Therefore, the Debtors argue that because neither document supports the conclusion that the State Court Judgment was on the merits, Shellpoint's *res judicata* argument must fail.

With respect to the sufficiency of the Complaint, the Debtors maintain their

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position that the allegations satisfy applicable pleading standards, but request leave to amend if this Court determines that the Complaint is insufficient.

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After reviewing the pleadings, including both parties' requests for the Court to take judicial notice of exhibits that go beyond the four corners of the Complaint, the Court issued an order informing the parties that the Motion to Dismiss would be treated as a motion for summary judgment [Adv. Doc. No. 36] (the "Order"). The Order provided the parties the opportunity to submit additional materials for the Court's consideration in connection with the Motion. *See* Fed. R. Civ. P. 12(b) (made applicable pursuant to Fed. R. Bankr. P. 7012) ("If, on a motion under Rule 12(b) (6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion").

Summary of Debtors' Supplemental Opposition

On July 19, 2019, the Debtors timely submitted a supplemental opposition [Adv. Doc. No. 40], a statement of controverted facts and genuine issues of law [Adv. Doc. No. 41], and declarations from Elizabeth Akintimoye [Adv. Doc. No. 42] (the "Akintimoye Decl.") and Sergio and Esmeralda Miranda [Adv. Doc. No. 43] (the "Miranda Decl."). The Supplemental Opposition advances the following arguments: (1) the assignment of the 1123 Property deed of trust from Bank of America to Nationstar is void as a violation of the automatic stay and is an avoidable post-petition transfer pursuant to 11 U.S.C. § 549(c); (2) Shellpoint should be equitably estopped from arguing it is not bound by the Plan because (a) Nationstar had both constructive and actual knowledge of the Debtors' Bankruptcy Case, had an obligation to notify the Debtors of its purchase of the 1123 DOT pursuant to 12 U.S.C. § 2605 and Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure, and failed to take any steps to notify them; and (b) Nationstar was served with relevant pleadings before confirmation of the Debtors' Plan and failed to object. Based on the foregoing, the Debtors contend that there are triable issues of material fact on the issue of whether Nationstar had notice of the Bankruptcy Case before the Plan was confirmed and

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whether it is bound by the Plan.

Summary of Shellpoint's Supplemental Reply

On July 29, 2019, Shellpoint timely submitted a supplemental reply [Adv. Doc. No. 45], a statement of uncontroverted facts [Adv. Doc. No. 46], a declaration from Katisha Gill [Adv. Doc. No. 47] (the "Gill Decl."), and an amended request for judicial notice [Adv. Doc. No. 48]. Shellpoint makes the following arguments: (1) Shellpoint cannot be bound by the Plan or equitably estopped from making that argument because Nationstar was a known creditor during the pendency of the Bankruptcy Case and Debtors failed to identify Nationstar as a creditor in their Plan or provide it with proper notice to participate in the Bankruptcy Case or object to the Plan; (2) even if Nationstar had actual and constructive knowledge of the Bankruptcy Case, it did not have a duty to inject itself into the bankruptcy process and the Debtors still had an obligation to provide formal notice of relevant pleadings; (3) the Debtors have failed to submit admissible evidence establishing that they provided Nationstar with formal notice of relevant confirmation pleadings; and (4) the Debtors have failed to establish as a matter of law that they are entitled to declaratory or injunctive relief.

The Unauthorized Miranda Declaration

On July 30, 2019, the Debtors submitted the *Supplemental Declaration of Sergio Miranda in Opposition to the Motion for Summary Judgment by Shellpoint Mortgage Servicing LLC* [Adv. Doc. No. 49] (the "Unauthorized Miranda Declaration"), notwithstanding this Court's unambiguous notice to the parties that it would not consider any additional pleadings filed later than the respective dates set forth in the Order [*see* Adv. Doc. No. 36], and without first requesting the Court's permission. Therefore, the Unauthorized Miranda Declaration is ordered STRICKEN and will not be considered.

II. Findings of Fact and Conclusions of Law

A. Request for Judicial Notice

In view of the Court's conversion of the Motion to Dismiss into a motion for summary judgment, the Court declines to rule on the parties' requests for judicial

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notice. The Court considers all of the evidence in the record and reviews such evidence in the light most favorable to the Debtors, as the non-moving parties, with all justifiable inferences drawn in their favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Easley v. City of Riverside*, 765 Fed. Appx. 282, 283 (9th Cir. 2019) (same).

B. Applicable Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (incorporated by Bankruptcy Rule 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party has no burden to negate or disprove matters on which the non-moving party will have the burden of proof at trial. *Sluimer v. Verity, Inc.*, 606 F.3d 584, 586 (9th Cir. 2010). The moving party need only point out to the court that there is an absence of evidence to support the non-moving party's case. *Id.* (citing *Celotex*, 477 U.S. at 325). The burden then shifts to the non-moving party to "designate specific facts showing that there is a genuine issue for trial." *Id.* (citing *Celotex*, 477 U.S. at 324).

Federal Rule of Civil Procedure ("Rule") 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. 317, 322.

C. This Court is Not Persuaded That Res Judicata Applies

Shellpoint argues that the Debtors are precluded from litigating the claims asserted in the Complaint because those claims have already been fully adjudicated in the State Court Action. To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (B.A.P. 9th Cir. 2015). California preclusion law requires that:

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1. The issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
2. The issue was actually litigated in the former proceeding;
3. The issue was necessarily decided in the former proceeding;
4. The decision in the former proceeding is final and on the merits; and
5. The party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225).

In this case, the Court finds that because the State Court Judgment does not contain any specific findings of fact or conclusions of law indicating the basis for entry of Judgment in Nationstar's favor, this Court could only infer that the State Court rejected Nationstar's jurisdictional arguments and agreed with Nationstar's other arguments. While the Court agrees that the State Court's entry of judgment in Nationstar's favor (as opposed to an order dismissing Nationstar) is persuasive evidence that the State Court found in Nationstar's favor on the merits, the record is simply too sparse to conclude that elements 2-4 above are satisfied. This is especially true considering the jurisdictional dialogue referenced in the Minute Order and the absence of a transcript from that hearing.

Therefore, the Court finds that the Debtors are not precluded from litigating the claims asserted in the Complaint on the grounds that the claims are barred by *res judicata*.

D. The Debtors Have Not Established That Equitable Estoppel Applies

The Debtors argue that under the doctrine of equitable estoppel Shellpoint should be bound by the Plan, notwithstanding the fact that Shellpoint's predecessor-in-interest Nationstar is not identified as a creditor in the Plan, because Nationstar knew of the Debtors' bankruptcy case and failed to inform the Debtors that Bank of America assigned the 1123 DOT to Nationstar. In California, five elements must be

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present for the doctrine of equitable estoppel to apply:

- (a) a representation or concealment of material facts;
- (b) made with knowledge, actual or virtual, of the facts;
- (c) to a party ignorant, actually and permissibly, of the truth;
- (d) with the intention, actual or virtual, that the ignorant party act on it; and
- (e) that party was induced to act on it.

Simmons v. Ghaderi, 44 Cal. 4th 570, 584, 80 Cal. Rptr. 3d 83, 187 P.3d 934 (2008), citing, 13 Witkin, *Summary of California Law, Equity*, § 191 at 5270528 (2005). "The party asserting equitable estoppel has the burden of proof." *Busching v. Superior Court*, 12 Cal.3d 44, 53, 115 Cal. Rptr. 241, 524 P. 2d 369 (1974).

The Court finds that the Debtors cannot satisfy the third element, because the undisputed facts show that the Debtors had reasonable inquiry notice that Nationstar acquired Bank of America's interest in the 1123 Property before the Debtors filed their Plan. See *In re Lua*, 529 B.R. 766, 776-77 (Bankr. C.D. Cal. 2015), overruled on other grounds ("The evidence must show that the party asserting equitable estoppel not only lacked actual knowledge of the true facts, but also did not have notice of the facts sufficient to put a reasonably prudent person on inquiry").

First, the Debtors admit that "[o]n 11/27/2013, [they] signed a written loan modification with Nationstar." Miranda Declaration, ¶ 14. Second, the Debtors do not dispute that the loan modification agreement identifies Nationstar as "Lender." Miranda Declaration, ¶ 16 & Ex. F. Although the Debtors assert that they did not have actual knowledge that Nationstar was the lender until much later (Miranda Declaration, ¶ 16), the Court finds that the Debtors were on reasonable inquiry notice of such fact by signing the loan modification agreement. **[Note 2]**

Additionally, the Court finds that the Debtors were on inquiry notice of Nationstar's interest in the 1123 Property as early as July 11, 2013, when the Assignment of Deed of Trust was recorded (Shellpoint's RJN, Ex. 4), because the filing of a plan of reorganization that purports to modify an interest in property is analogous to a subsequent purchaser acquiring an interest in real property. See *Gates Rubber Co. v. Ulman*, 214 Cal. App. 3d 356, 364, 262 Cal. Rptr. 630 (1989) (In California, "[t]he act of recording creates a conclusive presumption that a subsequent

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purchaser has constructive notice of the contents of the previously recorded document").

Therefore, the Debtors cannot establish as a matter of law that when they filed their Plan on December 6, 2013, they were both actually and permissibly ignorant of Nationstar's interest in the 1123 Property. [Note 3]

E. Shellpoint is Entitled to Judgment as a Matter of Law

Turning to the merits, the Court finds that Shellpoint is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. "A confirmed plan is a contract, approved by the court, that involves matters of offer, acceptance, performance, and other contract principles." *Official Comm. of Unsecured Creditors of Toy King Distribs. v. Liberty Sav. Bank, FSB (In re Toy King Distribs.)*, 256 B.R. 1, 156-57 (Bankr. M.D. Fla. 2000) (internal citations omitted). "A breach of the confirmed plan is actionable if the responsibility for the breach can be laid at the door of one or more of the defendants . . . because each is a party to the confirmed plan." *Id.*

The Court finds that the Debtors' breach of contract claim fails as a matter of law because there is no genuine dispute that Shellpoint's predecessor-in-interest, Nationstar, is not listed as a creditor in the Debtors' Plan (Main Case, Doc. No. 103) and therefore cannot be considered a "party" to the confirmed Plan or capable of breaching the Plan. Accordingly, Shellpoint is entitled to judgment in its favor with respect to the Debtors' breach of contract claim.

Additionally, because the Debtors have not established as a matter of law that Shellpoint is bound by the Plan, the Court will also enter judgment in Shellpoint's favor on the Debtors' second claim for relief for declaratory and injunctive relief.

III. Conclusion

For the reasons set forth above, the Court will enter summary judgment in Shellpoint's favor.

Shellpoint is directed to submit a proposed order, incorporating the tentative

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ruling in full, and a separate judgment within seven days of this hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: California Code of Civil Procedure section 437c(g) provides, in relevant part: ". . . Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order."

Note 2: The Debtors argue that the loan modification agreement is void because it was done without the approval of the bankruptcy court, in violation of the automatic stay, and because Nationstar did not discuss the terms of the agreement with the Debtors' attorney. Miranda Declaration, ¶ 15. However, none of these arguments are relevant to whether the Debtors had constructive notice of Nationstar's interest in the 1123 Property and it is immaterial to the instant dispute whether the loan modification agreement is valid.

Note 3: The parties dispute whether Nationstar was aware of the Debtors' bankruptcy case, whether it received adequate notice of the Debtors' proposed Plan, and whether it had any legal obligation to give notice of the assignment of deed of trust or otherwise participate in the bankruptcy process. The Debtors even attach a declaration from Elizabeth Akintimoye, who states that in her role as a volunteer paralegal she specifically remembers mailing relevant plan confirmation documents to Nationstar [Adv. Doc. No. 42, ¶¶ 5-7]. However, because the Debtors are unable to satisfy the third prong of the equitable estoppel test, the Court finds that these factual and legal disputes are not material to the outcome of this motion. While some of the

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Debtors arguments, if true, may give rise to other claims for relief, they do not create triable issues of material fact relevant to the claims asserted in the Complaint because the Debtors have not otherwise carried their burden of proof as to the applicability of equitable estoppel.

The Debtors also argue, without adequate support, that the recording of their bankruptcy petition defeats the subsequent assignment of the deed of trust by Bank of America to Nationstar and renders the assignment void as a violation of the automatic stay. There is no merit to the Debtors' contention that the assignment of the 1123 DOT violated the automatic stay and, more importantly, such contention is not material to whether the Debtors received actual or constructive notice of the assignment.

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

BANK OF AMERICA NATIONAL

Represented By
Adam N Barasch

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

Shellpoint Mortgage Servicing, LLC

Represented By
Erin M McCartney

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Sergio Lopez Miranda

Represented By
David A Akintimoye

Esmeralda Miranda

Represented By

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David A Akintimoye

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Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#2.00 Hearing
RE: [9] (Motion for summary judgment) Motion to Dismiss Adversary
Proceeding

FR. 5-21-19; 7-10-19

Docket 9

***** VACATED *** REASON: Per order entered on 7/15/2019**

Tentative Ruling:

7/9/2019

The parties were previously notified by the Court that Bank of America's Motion to Dismiss would be treated as a motion for summary judgment. The Court will enter summary judgment in Bank of America's favor.

Pleadings Filed and Reviewed

1. Complaint for Breach of Contract, Declaratory Judgment and Injunction [Adv. Doc. No. 1] (the "Complaint")
2. Bank of America, National Association's Motion to Dismiss Complaint [Adv. Doc. No. 9] (the "Motion to Dismiss")
 - a. Bank of America, National Association's Request for Judicial Notice in Support of Motion to Dismiss Complaint [Adv. Doc. No. 9-1] (the "RJN")
3. Notice of Motion to Dismiss Adversary Complaint [Adv. Doc. No. 10]
4. Opposition by Plaintiffs to Defendant Bank of America's Motion to Dismiss Adversary Complaint [Adv. Doc. No. 12]
 - a. Objection to Bank of America's Request for Judicial Notice Re Motion to Dismiss [Adv. Doc. No. 12-1] (the "Opposition to RJN")
5. Bank of America, National Association's Reply to Plaintiffs' Opposition to Motion to Dismiss Complaint [Adv. Doc. No. 13] (the "Reply")
 - a. Bank of America, National Association's Response to Plaintiffs' Objections to Request for Judicial Notice [Adv. Doc. No. 14] (the "RJN Response")
6. Order (1) Notifying Parties that Motion to Dismiss Will be Treated as Motion for Summary Judgment; (2) Setting Deadlines for Parties to Submit Any Additional

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Materials Pertinent to the Motion; and (3) Continuing Hearing Date [Adv. Doc. No. 15]

7. Declaration of Bank of America Representative in Support of Motion for Summary Judgment [Adv. Doc. No. 23] (the "Magaddino Decl.")
8. Plaintiffs' Opposition to Motion for Summary Judgment by Defendant Bank of America N.A. [Adv. Doc. No. 24] ("Plaintiffs' Supplemental Opposition")

I. Facts and Summary of Pleadings

Sergio Miranda and Esmeralda Miranda (together, the "Debtors") filed a voluntary chapter 11 petition (the "Bankruptcy Case" or "Main Case") on April 24, 2013 (the "Petition Date") [2:13-bk-20738-TD]. On December 6, 2013, the Debtors filed their Chapter 11 Plan of Reorganization [Main Case Doc. No. 103] (the "Plan"). On August 7, 2014, the Debtors obtained an Order Confirming Chapter 11 Plan of Reorganization [Main Case, Doc. No. 139] (the "Confirmation Order"). On February 3, 2015, the Court entered an Order Granting Motion for Final Decree [Doc. No. 155] and closed the Debtors' case on March 13, 2015.

On February 23, 2019, the Debtors moved to reopen their case to initiate an adversary proceeding to enforce the provisions of their confirmed Plan, which the Court granted by order entered February 27, 2019 [Doc. Nos. 161 & 163]. On February 25, 2019, the case was transferred from Judge Thomas B. Donovan to Judge Ernest M. Robles.

Summary of Complaint

On March 31, 2019, the Debtors initiated an adversary proceeding by filing a complaint against Bank of America National Association ("Bank of America") and Shellpoint Mortgage Servicing LLC ("Shellpoint," and together with Bank of America, the "Defendants") asserting claims for breach of contract, declaratory judgment and injunction [2:19-ap-01079-ER, Adv. Doc. No. 1] (the "Complaint").

The allegations of the Complaint are as follows:

- Pre-petition, the Debtors acquired interests in two parcels of real property: (1) 1123 West 119th Street, Los Angeles, CA 90044 (the "1123 Property"); and (2) 1118 West 119th Street, Los Angeles, CA 90044 (the "1118 Property," and

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together with the 1123 Property, the "Properties"). Complaint, ¶¶ 8-9. Bank of America funded the loans for both Properties and held the promissory notes and deeds of trust against the Properties. *Id.*, ¶ 11.

- The Debtors fell behind on their mortgage payments. *Id.*, ¶ 10. On April 24, 2013, the Debtors filed the Bankruptcy Case to modify their mortgages with Bank of America. *Id.*, ¶¶ 10-11.
- Bank of America filed proofs of claim in the Bankruptcy Case in support of both of its loans. *Id.*, ¶ 12.
- On April 24, 2013, the Debtors filed a chapter 11 plan of reorganization (the "Plan"). *Id.*, ¶ 13. The creditors who were entitled to vote on the Plan voted and on August 7, 2014, the Bankruptcy Court entered an order confirming the Plan. *Id.*
- Paragraphs 5a and 5b of the Plan describe the treatment for Defendants' claims regarding the Properties. *Id.*, ¶ 17. Paragraph 5a describes the treatment for the 1118 Property. *Id.* Among other things, Paragraph 5b states that the Debtors were responsible for making all escrow payments directly after the effective date of the Plan. *Id.* Paragraph 5b describes the treatment for the 1123 Property and again provides that the Debtors would be responsible for direct payment of escrow fees. *Id.*, ¶ 18.
- Post-petition, Bank of America hired Ditech Financial LLC ("Ditech") to service the mortgage on the 1118 Property and the Debtors began making payments to Ditech. *Id.*, ¶ 19.
- After making more than a year of Plan payments to Ditech, Ditech informed the Debtors that they owed escrow fees of \$54,635.64 and corporate advances in the sum of \$140,885.45 in connection with the 1118 Property. *Id.*, ¶ 20.
- During the pendency of the Bankruptcy Case, and before the Plan was confirmed, Bank of America appointed Nationstar Mortgage LLC ("Nationstar") to service the mortgage for the 1123 Property and the Debtors began making payments to Nationstar. *Id.*, ¶ 21. In the later part of 2018, Shellpoint informed the Debtors that it was the new servicer of the loan and the Debtors have been making payments to Shellpoint ever since. *Id.*
- Post-confirmation, despite the fact that they continued making payments in accordance with the Plan, the Debtors received mortgage statements that did not reflect the terms of the confirmed Plan in several respects. *Id.*, ¶ 22.
- The Debtors' attempts to obtain the servicers' compliance with the terms of

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the Plan have proved abortive. *Id.*, ¶ 22.

In support of the Complaint, the Debtors attached the Plan (Ex. 1) and the Order confirming the Plan (Ex. 2).

Based on the foregoing allegations, the Debtors assert that they are entitled to damages arising from the Defendants' alleged breach of contract ("Claim One"). The Debtors allege that the Plan constituted a written contract between the Debtors and Defendants, that the Debtors have substantially performed all of the terms required of them, that the Defendants breached the contract, and that the Debtors have suffered harm as a result of Defendants' breach.

The Debtors also seek entry of a declaratory judgment in their favor finding that the Defendants are bound by the Plan and ordering the Defendants to comply with the terms of the Plan ("Claim Two").

Summary of Bank of America's Motion to Dismiss

On April 24, 2019, Bank of America moved to dismiss the Complaint, without leave to amend pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. First, Bank of America states that it cannot have been bound by the Debtors' Plan because it was neither a servicer nor lender of either loan for the Properties at the time the Debtors' Plan was confirmed because, prior to confirmation, Assignments of Deeds of Trust were executed and recorded conveying Bank of America's rights to third parties. In support of this argument, Bank of America requests the Court take judicial notice of twelve documents relevant to establishing that it assigned its rights away prior to confirmation of the Debtors' Plan. Therefore, Bank of America argues that the Debtors' breach of contract claims must fail because the Plan did not create a contract between the Debtors and Bank of America. Alternatively, Bank of America contends that dismissal is appropriate because the Complaint fails to adequately state a claim for relief because it fails to adequately set forth what Bank of America failed to perform that subjects it to a breach of contract claim.

With respect to Claim Two, Bank of America argues that because the Debtors cannot succeed on their breach of contract claim against it, the Debtors' request for declaratory and injunctive relief must also be dismissed because they are not

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independent claims that can stand alone.

Bank of America also highlights that this is the Debtors' second attempt to hold it accountable for the alleged breach of contract claim. More specifically, Bank of America states that on May 12, 2017, the Debtors filed a lawsuit in state court against Bank of America, Ditech, and Nationstar. However, Ditech filed a demurrer which was sustained without leave to amend, Nationstar obtained judgment in its favor pursuant to a motion for summary judgment, and Bank of America was dismissed on August 8, 2018 pursuant to its request for dismissal.

Summary of the Debtors' Opposition

The Debtors make the following arguments in opposition to the Motion to Dismiss. First, the Debtors argue that the motion should be dismissed because Bank of America only served Debtors' counsel with the motion and failed to serve the Debtors directly as required by Local Bankruptcy Rule ("LBR") 9013-1(d)(1). Next, the Debtors argue that Bank of America is precluded from challenging the Confirmation Order under the principle of res judicata because it received notice of the Debtors' solicitation package and could have raised these arguments in opposition to plan confirmation. The Debtors also argue that Bank of America has not presented any evidence demonstrating that it transferred the underlying promissory notes along with the deeds of trust and, as a result, the alleged transfers may not have been legally effective.

The Debtors further argue that even if Bank of America legally assigned its rights away before the Plan was confirmed, it was still bound by the Plan because it had a full and fair opportunity to object and it failed to do so. The Debtors also appear to argue that Bank of America's argument that it assigned its interests away pre-confirmation is an affirmative defense and that raising that defense in connection with its Rule 12(b)(6) motion is not procedurally proper.

Next, the Debtors argue that to the extent Bank of America is attempting to assert that res judicata precludes the Debtors from pursuing their claims against it in this action because of its dismissal from the state court action, such argument must fail because the dismissal was without prejudice. Finally, the Debtors argue that the Complaint contains sufficient allegations to adequately plead claims for relief for

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breach of contract and declaratory relief because of the liberal pleading rules in federal courts.

The Debtors also raise a number of objections to Bank of America's request for judicial notice to the extent that it seeks to introduce the requested documents for the truth of the facts contained within those documents and objects to Exhibits I and J on the basis that those documents lack relevance with the matters at issue in this case.

Summary of Bank of America's Reply in Support of its Motion to Dismiss

Bank of America filed a reply responding to the Debtors' arguments as follows. First, Bank of America maintains that its service of the motion was proper under applicable local rules. Second, Bank of America argues that res judicata is inapplicable because it is illogical to argue that it is bound by a Plan that affects property it had no legal interest or rights in just because the Debtors mistakenly listed it as the holder of the secured claims in its Plan. Bank of America also argues that the Debtors cannot satisfy a necessary res judicata element because there was no prior action between Bank of America and the Debtors.

Next, Bank of America states that it does not seek to have this Complaint dismissed on the grounds that it was previously dismissed from the state court action and that it was simply highlighting the Debtors' litigation history to provide further support for the baseless claims the Debtors are presently asserting against it. Finally, Bank of America reiterates that the allegations in the Complaint fail to adequately state claims for relief.

Bank of America also filed a response to the Debtor's objection to its request for judicial notice setting forth the basis for why the Debtors' objection should be overruled.

Order Notifying Parties that Motion to Dismiss Will be Treated as Motion for Summary Judgment

After reviewing Bank of America's Motion to Dismiss, which contains several exhibits going beyond the four corners of the Debtors' Complaint, the Court issued an order informing the parties that the Motion to Dismiss would be treated as a motion

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for summary judgment [Adv. Doc. No. 15] (the "Order"). The Order provided the parties the opportunity to submit additional materials for the Court's consideration in connection with the Motion. *See* Fed. R. Civ. P. 12(b) (made applicable pursuant to Fed. R. Bankr. P. 7012) ("If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion"). The deadline to submit additional materials was June 19, 2019.

Summary of Bank of America's Supplemental Declaration

On June 12, 2019, Bank of America submitted the declaration Susan E. Magaddino, Assistant Vice President of Bank of America [Adv. Doc. No. 23] (the "Magaddino Declaration" or "Magaddino Decl."), which attached additional evidence in support of the motion. In addition to referring to the documents filed with its request for judicial notice, Bank of America also attached, among other things, pre-confirmation date letters from Bank of America to the Debtors informing them that the servicing of the respective loans for the Properties were being transferred to new servicers [Adv. Doc. No. 23, Ex. 2 & 3].

Summary of the Debtors' Supplemental Opposition

On June 19, 2019, the Debtors filed a supplemental opposition responding to the Magaddino Declaration [Adv. Doc. No. 24] (the "Supplemental Opposition"). The Debtors' Supplemental Opposition does not contain any additional evidence for the Court's consideration. Instead, the Debtors repeat their contention that Bank of America has not presented sufficient evidence establishing that it was not bound by the Plan because there is no evidence that Bank of America transferred the underlying promissory notes along with the deeds of trust.

II. Findings of Fact and Conclusions of Law

A. The Debtors Have Not Been Denied Due Process

As a preliminary matter, the Court finds that the Debtors have not been denied due process by not being individually served with the Motion to Dismiss because they had

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a full and fair opportunity to respond to the motion. Furthermore, the Debtors were notified of the Court's intention to convert the Motion to Dismiss into a motion for summary judgment and submitted a timely Supplemental Opposition.

B. Request for Judicial Notice

In view of the Court's conversion of the Motion to Dismiss into a motion for summary judgment, the Court need not rule on the parties' dispute over whether and to what extent this Court may grant Bank of America's requests for judicial notice. Instead, the Court considers all of the evidence in the record and reviews such evidence in the light most favorable to the Debtors, as the non-moving parties, with all justifiable inferences drawn in their favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Easley v. City of Riverside*, 765 Fed. Appx. 282, 283 (9th Cir. 2019) (same).

C. Applicable Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (incorporated by Bankruptcy Rule 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party has no burden to negate or disprove matters on which the non-moving party will have the burden of proof at trial. *Sluimer v. Verity, Inc.*, 606 F.3d 584, 586 (9th Cir. 2010). The moving party need only point out to the court that there is an absence of evidence to support the non-moving party's case. *Id.* (citing *Celotex*, 477 U.S. at 325). The burden then shifts to the non-moving party to "designate specific facts showing that there is a genuine issue for trial." *Id.* (citing *Celotex*, 477 U.S. at 324).

Federal Rule of Civil Procedure ("Rule") 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. 317, 322.

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1. The Debtors Lack Standing to Challenge the Effectiveness of Bank of America's Assignments

The Debtors challenge the validity of Bank of America's assignment of its interests in the relevant loans to Green Tree and Nationstar on the grounds that Bank of America has not produced any evidence to establish that it assigned the promissory notes along with the deeds of trust. Because the Debtors lack standing to challenge the efficacy of the assignments, this argument fails. **[Note 1]**

Generally, "third parties do not have enforceable contract rights unless they are intended beneficiaries." *Dicion v. Mann Mortg., LLC*, 718 F. App'x 476, 478 (9th Cir. 2017). Accordingly, a third-party borrower lacks standing to challenge the effectiveness of an assignment unless the assignment is void, as opposed to voidable. *Id.*; see also *Banares v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 29909, 2014 WL 985532, at *5 (N.D. Cal. Mar. 7, 2014). In *Barnes*, the court determined that violations of a purchase and sale agreement – such as failing to assign the deed of trust or endorse the note – rendered the assignment of a mortgage voidable, and not void. 2014 U.S. Dist. LEXIS 29909, at *5 (rejecting *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079, 160 Cal. Rptr. 3d 449 (2013)); see also *Christie v. Bank of New York Mellon, N.A.*, 617 Fed. Appx. 680, 681 (9th Cir. 2015) (As a borrower, Christie does not have standing under California law to challenge irregularities in the assignment of her Note or Deed of Trust because those instruments are negotiable and her obligations thereunder remain unchanged even if her creditor changes). In this case, the Debtors' challenges to the relevant assignments would render the assignments voidable, not void. Therefore, the Debtors have not demonstrated that they have standing to attack the assignments on this basis.

Similarly, the Debtors lack standing to assert that the assignments were defective because Bank of America has not established that MERS was authorized to assign Bank of America's rights under the respective promissory notes. See e.g., *Dicion v. Mann Mortg., LLC*, 718 F. App'x 476, 478 (9th Cir. 2017) ("A challenge to the validity of an assignment based on the executor's lack of authority would make the assignment voidable, not void"); *Paik-Apau*, 2012 U.S. Dist. LEXIS 151397, 2012 WL 5207495, at *5 ("Paik-Apau's challenges to the assignments of her loan go to whether those assignments are voidable, as she argues that persons or entities lacked authority to assign the loan documents. She lacks standing to make those

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challenges"); *Deutsche Bank Tr. Co. v. Beesley*, 2012 U.S. Dist. LEXIS 156838, 2012 WL 5383555, at *6 (D. Haw. Oct. 30, 2012) ("Nor do the Beesleys create standing to contest the validity of the assignments by questioning the power of any person or entity making the assignments"); *Siliga v. Mortgage Electronic Registration Sys.* (2013) 219 Cal. App. 4th 75 (holding that borrower could not challenge MERS's authority to assign note and deed of trust when language of deed of trust expressly permitted MERS to exercise all rights and interests of lender, which necessarily included authority to assign).

This Court is aware of the California Supreme Court's decision, *Yvanova v. New Century Mortg. Corp.*, in which the court held that a "home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale." 62 Cal. 4th 919, 942-43, 199 Cal. Rptr. 3d 66, 365 P.3d 845 (2016). However, the *Yvanova* court expressly limited its application to instances in which a borrower has suffered injury arising from a nonjudicial foreclosure. *Id.* at 924. Furthermore, since *Yvanova's* ruling, "courts have confirmed that the decision is expressly limited to the post-foreclosure context," which makes it inapplicable to the facts of this case. *Watson v. Bank of Am., N.A.*, 2016 U.S. Dist. LEXIS 154375, at *46-49 (S.D. Cal. Nov. 7, 2016) (citing *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 815, 199 Cal. Rptr. 3d 790 (2016) (borrower lacked standing to challenge cancellation of assignment of deed of trust prior to a foreclosure and because the allegations render the assignment voidable, not void)).

Moreover, the *Yvanova* court stated that its ruling was predicated on its "concern[] only with prejudice in the sense of an injury sufficiently concrete and personal to provide standing" and concluded that a borrower meets the general standard for standing to sue by showing an invasion of his or her legally protected interest. 62 Cal. 4th at 937-38. In this case, the Debtors have not established that their alleged injuries stem from the purportedly ineffective assignments. For example, the Debtors do not assert that both Bank of America and the assignees of the loans have attempted to collect under the loans or that they have suffered a wrongful foreclosure. Rather, it appears the Debtors' prejudice, if any, is entirely one of their own making as a result of their failure to properly name Green Tree and Nationstar in

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their Plan or later seek to amend the Plan to name those parties. Therefore, the Court finds that the Debtors have not alleged any harm, injury or prejudice "sufficiently concrete and personal to provide standing" to challenge the assignments. *Yvanova*, 62 Cal. 4th at 937.

2. The Debtors are Estopped From Challenging the Effectiveness of Bank of America's Assignment to Green Tree

The Court also finds that the Debtors are estopped from challenging the effectiveness of the assignment from Bank of America to Green Tree with respect to the 1118 Property. The doctrine of judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001).

As Bank of America highlights, on June 20, 2013, almost six months *before* the Debtors filed the Plan, Green Tree file a Notice of Transfer of Claim [Main Case, Doc. No. 46] giving the Debtors notice of Bank of America's assignment of its interests in the 1118 Property. The Debtors subsequently acknowledged Green Tree as the legal assignee by entering into a *Stipulation Re: Treatment of Creditor's Claim Under Debtors' Chapter 11 Plan of Reorganization* with Green Tree [Main Case, Doc. No. 113] (the "Green Tree Stipulation"), which this Court also approved [Main Case, Doc. No. 117]. The Green Tree Stipulation provides, in relevant part:

The terms of this Stipulation may not be modified, altered, or changed by the Debtors' Chapter 11 Plan; any subsequently filed amended or modified Chapter 11 Plan of Reorganization or any order on the foregoing without the express written consent of the Creditor. The above terms of this Stipulation shall be incorporated into the Debtors' Chapter 11 Plan and/or any subsequently filed amended or modified Chapter 11 Plan and confirmation order thereon. *In the event of a conflict between a term or provisions of this Stipulation and Debtors' Chapter 11 Plan, or any amendments or modifications thereto, the terms of this Stipulation shall control.*

Green Tree Stipulation, ¶ 14 (emphasis added).

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Therefore, despite the fact that the Debtors' Plan identifies Bank of America as the holder of the Class 5(a) claim [Main Case, Doc No. 103], any reference to Bank of America was effectively replaced by the relevant provisions of the Green Tree Stipulation. Furthermore, based on this Court's independent review of relevant documents filed in the main case, the Court notes that Green Tree was the *only* impaired creditor to cast ballots in favor of the Debtors' Plan and, without Green Tree's votes, the Debtors would not have obtained confirmation of their Plan [*See* Main Case, Doc. Nos. 134, 135 & 136].

Based on the foregoing, the Court finds that the Debtors are estopped from now taking the contradictory position that Bank of America's assignment was ineffective – i.e. that Green Tree did not have the authority to take any legal actions with respect to the 1118 Property – to gain a tactical advantage against Bank of America in this action. The Court also notes the absurdity in this argument because if the Green Tree assignment was ineffective, then the Confirmation Order must be vacated and there would no longer be any binding Plan that could support the Debtors' breach of contract claim in this action.

For the same reasons, the Court finds that the Debtors have waived and forfeited any rights to challenge the effectiveness of the 1118 Property assignment.

3. Res Judicata is Inapplicable

Pursuant to 11 U.S.C. § 1141(a), ". . .the provisions of a confirmed plan bind the debtor . . . any entity acquiring property under the plan, and any creditor . . . whether or not the claim or interest of such creditor . . . is impaired under the plan and whether or not such creditor . . . has accepted the plan." "Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect." *Trulia v. Barton*, 107 F.3d 685 (9th Cir. 1995).

In this case, the undisputed facts demonstrate that Bank of America ceased to be a creditor of the Debtors' prior to the filing, and confirmation, of the Plan. Accordingly, the Court rejects the Debtors' contention that the Plan should be afforded a *res judicata* effect to bar Bank of America from raising this issue because the argument incorrectly presupposes that Bank of America was a creditor or party-in-

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interest that could be bound by the Plan, despite having no interest legal or equitable interest in the property dealt with by the Plan.

4. Bank of America is Entitled to Judgment as a Matter of Law

Turning to the merits, the Court finds that Bank of America is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. Based on this Court's review of the relevant pleadings and evidence, the Court finds there can be no genuine dispute as to the following material facts:

1123 & 1123 ½ W 119th Street, Los Angeles, CA 90044 (the "1123 Property")

- i. On February 2, 2007, the Debtors signed a promissory note to obtain a loan (the "1123 Loan") from Countrywide Home Loans, Inc. ("Countrywide") [Magaddino Decl., Ex 1].
- ii. The 1123 Loan was secured by a deed of trust (the "1123 DOT") and recorded against the 1123 Property [RJN, Ex. A].
- iii. The 1123 DOT names Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for Countrywide and Countrywide's successors and assigns and designates MERS as the beneficiary [RJN, Ex. A].
- iv. The 1123 DOT states that MERS "has the right: to exercise any or all of those interests, including but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender" [RJN, Ex. A].
- v. On July 1, 2008, Bank of America acquired Countrywide. [**Note 2**]
- vi. Prior to the Debtors' bankruptcy filing, Bank of America acted as the servicer of the 1123 Loan [Magaddino Decl., ¶ 5].
- vii. On April 24, 2013, the Debtors filed a voluntary joint chapter 11 petition for relief [Bankruptcy Case No. 2:13-bk-20737-ER].
- viii. On April 10, 2013, Bank of America sent the Debtors a letter informing them that the servicing of the 1123 Loan would be transferred to Nationstar Mortgage LLC ("Nationstar") effective May 1, 2013 [Magaddino Decl., Ex. 2].
- ix. On May 14, 2013, MERS recorded an assignment of deed of trust assigning the 1123 DOT to Nationstar [RJN, Ex. B].
- x. On December 6, 2013, the Debtors filed their chapter 11 plan of reorganization (the "Plan") [Main Case, Doc. No. 103].

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- xi. On August 7, 2014, the Court entered an Order Confirming the Debtors' Plan [Main Case, Doc. No. 139].

1118 W 119th Street, Los Angeles, CA 90044 (the "1118 Property")

- i. On May 31, 2007, the Debtors signed a promissory note to obtain a loan (the "1118 Loan") from Countrywide [Magaddino Decl., Ex. 3].
- ii. The 1118 Loan was secured by a deed of trust (the "1118 DOT") and recorded against the 1118 Property [RJN, Ex. C].
- iii. The 1118 DOT names MERS as nominee for Countrywide and Countrywide's successors and assigns and designates MERS as the beneficiary [RJN, Ex. C].
- iv. The 1118 DOT states that MERS "has the right: to exercise any or all of those interests, including but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender" [RJN, Ex. C].
- v. On May 13, 2011, MERS recorded an assignment of deed of trust assigning the 1118 DOT to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP ("BAC") [RJN, Ex. D].
- vi. On July 1, 2011, BAC merged into Bank of America, N.A. [Magaddino Decl., fn. 2, Main Case, Doc. No. 70, Ex. A].
- vii. Prior to the Debtors' bankruptcy filing, Bank of America acted as the servicer of the 1118 Loan [Magaddino Decl., ¶ 10].
- viii. On April 24, 2013, the Debtors filed a voluntary joint chapter 11 petition for relief [Bankruptcy Case No. 2:13-bk-20737-ER].
- ix. On May 11, 2013, Bank of America sent the Debtors a letter informing them that the servicing of the 1118 Loan would be transferred to Green Tree Servicing LLC ("Green Tree") effective June 1, 2013 [Magaddino Decl., Ex. 3].
- x. On June 20, 2013, Green Tree file a Notice of Transfer of Claim giving the Debtors notice of Bank of America's assignment of its interests in the 1118 Property [Main Case, Doc. No. 46].
- xi. On December 6, 2013, the Debtors filed their Plan [Main Case, Doc. No. 103].
- xii. On January 28, 2014, the Debtors filed a *Stipulation Re: Treatment of Creditor's Claim Under Debtors' Chapter 11 Plan of Reorganization* with Green Tree (the "Green Tree Stipulation"), which this Court approved

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[Main Case Doc. Nos. 113, 117].

xiii. Green Tree cast the only ballots in favor of the Debtors Plan [Main Case, Doc. Nos. 134, 135 & 136].

xiv. On August 7, 2014, the Court entered an Order Confirming the Debtors' Plan [Main Case, Doc. No. 139].

The Debtors claim that Bank of America was bound by the terms of their confirmed Plan and subsequently breached those terms by sending them mortgage statements that do not reflect the terms of the confirmed Plan. However, the evidence before the Court, submitted by Bank of America, establishes that Bank of America was neither the holder of the notes and deeds of trust for the Properties, nor the servicers of the loans as of the date the Debtors obtained confirmation of their Plan. Despite being afforded an opportunity, the Debtors have not responded with any evidence to controvert Bank of America's evidence. Therefore, on this record, the Court finds that Bank of America was not bound by the Plan because it had no legal or equitable interest in the property dealt with by the Plan.

Accordingly, the Bank is entitled to judgment in its favor with respect to the Debtors' breach of contract claim. Furthermore, because the Debtors have not established as a matter of law that Bank of America was bound by the Plan, the Court will also enter judgment in favor of Bank of America on the Debtors' second claim for relief for declaratory and injunctive relief.

III. Conclusion

For the reasons set forth above, the Court will enter summary judgment in Bank of America's favor.

Bank of America is directed to submit an order indicating that judgment has been granted in its favor within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: This argument also improperly tries to shift the burden of production onto Bank of America.

Note 2: 12 U.S.C. § 215a(e) ("The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, . . . and all other rights and interests . . ., in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the merging banks or banking associations at the time of the merger . . .").

Party Information

Debtor(s):

Sergio Miranda

Represented By
David A Akintimoye

Defendant(s):

BANK OF AMERICA NATIONAL

Represented By
Adam N Barasch

Shellpoint Mortgage Servicing LLC

Pro Se

DOES 1-10, Inclusive

Pro Se

Joint Debtor(s):

Esmeralda Miranda

Represented By
David A Akintimoye

Plaintiff(s):

Sergio Lopez Miranda

Represented By
David A Akintimoye

Esmeralda Miranda

Represented By
David A Akintimoye

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**#3.00 Hearing re [113] Second Amended Individual Debtor's Disclosure Statement
In Support Of Plan Of Reorganization**

Docket 0

***** VACATED *** REASON: 6/25/2019 - Disclosure Statement Approved**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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#4.00 Hearing
RE: [97] Confirmation of chapter 11 debtor's plan

fr. 6-19-19

Docket 97

Tentative Ruling:

8/20/2019

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Stipulation Re: Treatment of Creditor, Direct Capital Corporation's Proof of Claim [Doc. No. 47] (the "DCC Stipulation")
2. Order Approving Stipulation Re: Treatment of Creditor, Direct Capital Corporation's Proof of Claim [Doc. No. 50]
3. Stipulation Re: Treatment of Creditor, Benito Barbosa's Proof of Claim [Doc. No. 110]
4. Order Approving Stipulation Re: Treatment of Creditor, Benito Barbosa's Proof of Claim [Doc. No. 112] (the "Barbosa Stipulation")
5. Second Amended Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 113] (the "Second Amended Disclosure Statement")
6. Second Amended Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 114] (the "Second Amended Plan")
7. Order Approving Second Amended Disclosure Statement in Support of Second Amended Plan of Reorganization [Doc. No. 119]
8. Notice of Hearing on Confirmation of Debtor's Second Amended Chapter 11 Plan [Doc. No. 120]
9. Proof of Service Re: Mailing of Second Amended Disclosure Statement; Second Amended Plan; Notice of Hearing on Confirmation of the Plan; and Ballots [Doc. No. 123]
10. Plan Ballot Summary [Doc. No. 124]
11. Debtor's Motion for an Order Confirming Individual Chapter 11 Plan of

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Reorganization (Second Amended) [Doc. No. 125] (the "Confirmation Brief")

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, Dwight Stephens (the "Debtor"), filed this voluntary chapter 11 case on March 21, 2018 (the "Petition Date"). The Debtor now seeks confirmation of his Second Amended Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 114] (the "Plan"). No objections to confirmation are on file.

Summary of the Plan

Administrative Claims

The Debtor anticipates that administrative fees for professionals will be approximately \$28,700 as of the effective date. The Debtor proposes to pay all allowed administrative claims in full, on the effective date, from the Debtor's fully exempt retirement account, unless other arrangements are made with the Debtor's professionals for deferred payments.

Priority Tax Claims

i. Los Angeles County Tax Collector (the "LACTC"): The Debtor proposes to pay the LACTC's priority claim of \$113.25 in full on the effective date and to pay the LACTC's secured claim of \$2,735.42 in full, plus 18% interest, by making 24 equal monthly installments of \$146.33/mo, beginning July 2019 and continuing through June 2021.

ii. Internal Revenue Service (the "IRS"): The Debtor proposes to pay the IRS's priority tax claim of \$1,901 in full, plus 5% interest, by making equal monthly installments of \$85.11/mo beginning October 2019 and continuing through September 2021.

Class 2(c) – Secured Claim of Benito Barbosa ("Mr. Barbosa") – Accepts the Plan

Pursuant to the Court approved Barbosa Stipulation, Class 2(c) consists of the \$200,000 secured claim of Mr. Barbosa against certain of the Debtor's assets described in the stipulation [Doc. Nos. 110 & 112]. The Debtor will pay this claim in full without interest by making (i) monthly payments over the duration of the Plan; (ii) a one-time payment of \$45,000 on or near the Effective Date; and (iii) a one-time

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payment of \$115,000 on or before the one-year anniversary of the Effective Date.

The remainder of Mr. Barbosa's claim is separately classified as an unsecured claim in Class 6(c), discussed below.

Mr. Barbosa's claim is impaired, and he has voted to accept the Plan.

Class 6(a) – General Unsecured Claims – Unimpaired (Deemed to Accept)

Class 6(a) includes any allowed unsecured claims of \$100 or less and any allowed unsecured claim larger than \$100 but whose holder agrees to reduce its claim to \$100. Each member of this class will receive 100% of the allowed claim on the effective date. This class is unimpaired and not entitled to vote on the Plan. However, the Debtor's Confirmation Brief states that no there are no creditors in this class.

Class 6(b) – General Unsecured Claims – Accepts the Plan

Pursuant to the Court approved Class 6(b) consists of all allowed general unsecured claim not in Class 6(a) and not entitled to priority. The Debtor proposes to pay creditors in this class at least 30% of their claims over a period of 5 years with 0% interest.

This class is impaired and voted to accept the Plan.

Class 6(c) – Unsecured of Claim of Mr. Barbosa – Accepts the Plan

Pursuant to the Barbosa Stipulation, Class 6(c) consists of the Mr. Barbosa's unsecured claim of \$1,939,530.42. This class will receive \$0.00.

This class is fully impaired, but Mr. Barbosa has voted to accept the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The is confirmed.

SECTION 1129(a)(1)

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Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a). The Plan contains one secured creditor class, a convenience class of general unsecured creditors, a class of general unsecured creditors, and a separate class of the general unsecured claim of Mr. Barbosa. The Debtor represents that there are no creditors taking part in the convenience class. Furthermore, Mr. Barbosa has stipulated to the separate classification of his general unsecured claim from other general unsecured claims and agreed to receive less favorable treatment.

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan designates a convenience class of general unsecured creditors as Class 6(a), but the Debtor represents that no creditors have elected to participate in this class. Accordingly, § 1122(b) does not apply. In the event any general unsecured creditor tardily elects to participate in this class, the Court finds the proposed treatment for Class 6(a) comports with § 1122(b).

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority

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tax claims], and classes of interest."

The Plan appropriately designates classes of claims and interests. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that Class 6(a) is unimpaired and that all other classes are impaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment of all impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded from the following sources:

- i. Approximately \$4,000 - \$5,000 cash available as of the confirmation hearing;
- ii. Reverse Mortgage of real property located at 5337 S. Verdun Avenue, Los Angeles, CA 90043. The Debtor anticipates the reverse mortgage will

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produce \$55,000 during month 1 of the Plan and an additional \$115,000 in month 13.

- iv. Future disposable income for 5 years. The Debtor anticipates having approximately \$1,131 net future income available to be able to make the proposed plan payments, which the Debtor anticipates will increase to \$1,432/month starting in April 2020 once the Debtor's non-filing spouse finishes paying off her car. The source of the Debtor's monthly income is from the Debtor's draw from his podiatry practice, his social security income, lump sum contributions from the Debtor's non-filing spouse, and monthly contributions from the Debtor's non-filing spouse's income.

The Debtor submitted evidence in support the Disclosure Statement for the following funding sources to support a finding that they provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Debtor is an individual. Section 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Debtor is an individual. Section 1123(a)(7) does not apply.

10. Section 1123(a)(8)

Section 1123(a)(8) was added to the Bankruptcy Code to provide that, to be confirmable, an individual debtor's plan must provide for the payment to creditors of all or such portion of earnings from personal services or other future income of the

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debtor. The Plan provides for the payment of a portion of the Debtor's future income to creditors. The Plan satisfies § 1123(a)(8).

11. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required in a plan of reorganization. The Plan appropriately implements some of § 1123(b)'s optional provisions. The Plan complies with § 1123(b).

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Debtor has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see Order Approving Second Amended Disclosure Statement in Support of Second Amended Plan of Reorganization* [Doc. No. 119]);
- 2) Obtained Court approval of the employment of professional persons (*see* Doc. Nos. 18 & 78);
- 3) Obtained Court approval for the Debtor to further encumber community property to facilitate a reverse mortgage [Doc. No. 102]; and
- 4) Filed monthly operating reports.

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Debtor has complied with the requirements of the Code throughout this case. Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith because no party has objected to confirmation. The Plan satisfies § 1129(a)(3).

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SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides for Court approval of all professional fees. *See* Plan at I.A. The Plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Debtor is an individual. Section 1129(a)(5) does not apply.

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

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Classes 2(c), 6(b), and 6(c) have accepted the Plan. Class 6(a) is unimpaired and deemed to accept the Plan. Accordingly, all classes have either accepted the Plan or will receive treatment that is no less favorable than they would receive under Chapter 7. The Plan satisfies § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. All impaired classes have accepted the Plan. Accordingly, the Plan satisfies § 1129(a)(8).

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all outstanding allowed administrative claims in full as soon as the fees are approved by the Court and none of the professionals have requested a different payment arrangement. The Plan also provides for payment of priority tax claims in a manner consistent with § 1129(a)(9)(C)(ii). The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

All impaired classes have accepted the Plan. Accordingly, § 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

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The Debtor submits that he has sufficient cash on hand to pay the amounts due on the Effective Date and sufficient net monthly income to pay the proposed plan payments. Based upon the Court's review of the budget projections included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. To the extent any fees are outstanding, the Plan provides that all such fees will be paid by the Effective Date. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the Plan. Section 1129(a)(15) does not apply because no objections to the Plan are on file.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property. The Plan satisfies § 1129(a)(16).

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SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, does not apply. All impaired classes have voted to accept the Plan.

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

III. Conclusion

For the reasons set forth above, the Plan is CONFIRMED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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6/18/2019

For the reasons set forth below, the Disclosure Statement is APPROVED.

Pleadings Filed and Reviewed

12. Second Amended Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 97] (the "Disclosure Statement")
13. Second Amended Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 98] (the "Plan")
14. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, Dwight Stephens (the "Debtor"), filed this voluntary chapter 11 case on March 21, 2018 (the "Petition Date"). The Debtor owns and operates his own podiatry practice. The Debtor sought bankruptcy protection to reorganize his affairs and resolve collection efforts brought by pre-petition judgment creditors. The Debtor previously sought approval of an earlier version of the disclosure statement but was directed to file an amended disclosure statement to address the Debtor's potential community property interest, if any, in Debtor's non-filing spouse's real property located at 5337 S. Verdun Avenue, Los Angeles, CA (the "Verdun Property"). In support of the Disclosure Statement, the Debtor has included a Moores/Marsden analysis that reflects that he has a \$143,982.80 community property interest in the Verdun Property.

The Debtor presently seeks approval of his Second Amended Disclosure Statement [Doc. No. 97]. The following provisions are the material provisions of Debtor's Second Amended Plan [Doc. No. 98]:

Administrative Claims

The Debtor anticipates that administrative fees for professionals will be approximately \$37,700 as of the effective date. The Debtor proposes to pay all administrative claims in full, on the effective date, from the Debtor's fully exempt

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retirement account, unless other arrangements are made with the Debtor's professionals for deferred payments.

Priority Tax Claims

i. Los Angeles County Tax Collector (the "LACTC"): The Debtor proposes to pay the LACTC's priority claim of \$113.25 in full on the effective date and pay the LACTC's secured claim of \$2,735.42 in full by making 24 equal monthly installments of \$146.33/mo with 18% interest.

ii. Internal Revenue Service (the "IRS"): The Debtor proposes to pay the IRS's priority tax claim of \$1,901 in full by making 34 equal monthly installments of \$141.80/mo with 5% interest.

Class 2(c) – Secured Claim of Benito Barbosa ("Mr. Barbosa")

Mr. Barbosa obtained a pre-petition medical malpractice judgment against the Debtor individually. On February 21, 2019, Mr. Barbosa filed amended Proof of Claim No. 4-2 asserting a claim for \$2,139,530.92, which Mr. Barbosa asserts is partially secured (the "Barbosa Claim"). The Debtor and Mr. Barbosa have reached an agreement, in principle, which will resolve the Barbosa Claim and anticipate filing a stipulation memorializing their agreement shortly. Pursuant to the parties' agreement, Mr. Barbosa will hold an allowed secured claim of \$200,000, which the Debtor proposes to pay in full within 1 year of the effective date with 0% interest. The remainder of Mr. Barbosa's claim will be separately classified as an unsecured claim in Class 6(c) and will be paid \$0.00.

The Debtor states that absent resolution of the Barbosa Claim, the Debtor's Plan will be infeasible.

Class 6(a) – General Unsecured Claims

This class includes any allowed unsecured claims of \$100 or less and any allowed unsecured claim larger than \$100 but whose holder agrees to reduce its claim to \$100. Each member of this class will receive 100% of the allowed claim on the effective date. This class is unimpaired and not entitled to vote on the Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claim not in Class 6(a) and not entitled to priority. The Debtor proposes to pay creditors in this class 30% of their claims over a period of 5 years with 0% interest. This class is impaired and entitled to

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vote on the Plan.

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Class 6(c) – Unsecured of Claim of Mr. Barbosa

This class consists of the remainder of Mr. Barbosa’s claim, pursuant to the stipulation in principle between Barbosa and the Debtor to resolve the Barbosa Claim. This class will receive \$0.00.

Means of Implementation

The Debtor’s Plan will be funded from the following sources:

- i. Approximately \$4,000 - \$5,000 cash available as of the confirmation hearing;
- ii. Reverse Mortgage of the Verdun Property. The Debtor anticipates the reverse mortgage will produce \$55,000 during month 1 of the Plan and an additional \$115,000 in month 13.
- iv. Future disposable income for 5 years. The Debtor anticipates having approximately \$900 net future income to put towards plan payments, which the Debtor anticipates will increase to \$1,201/month starting in April 2020 once the Debtor’s non-filing spouse finishes paying off her car. The source of the Debtor’s monthly income is from the Debtor’s draw from the podiatry practice, social security, lump sum contributions from the Debtor’s non-filing spouse, and monthly contributions from the Debtor’s non-filing spouse’s income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a).

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Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement adequately addresses the concerns highlighted by the Court in connection with its review of the Debtor’s original disclosure statement and contains adequate information in view of the size and complexity of the case. Among other things, the Disclosure Statement (1) describes the factors precipitating the Chapter 11 filing, (2) provides a description of the

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Debtor's assets and their estimated values, (3) describes the scheduled claims and classification structure of the Plan, (4) contains a liquidation analysis, (5) contains a disclaimer, (6) describes the risk factors attendant with the Plan, (7) identifies estimated administrative expenses, and (8) describes the means for execution of the Plan.

The following dates and deadlines will apply to solicitation and confirmation of the Debtor's Plan:

- 1) A hearing will be held on the confirmation of the Debtor's Chapter 11 Plan of Reorganization on **August 21, 2019, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan and, if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **June 28, 2019**.
- 3) **July 24, 2019** is fixed as the last day for creditors and equity security holders to return to Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtor's counsel by 5:00 p.m. on such date.
- 4) **July 31, 2019** is fixed as the last day on which the Debtor must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor has complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **August 7, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **August 14, 2019** is fixed as the last day on which the Debtor may file and serve a reply to any opposition to the Confirmation Motion ("Reply").

III. Conclusion

For the reasons set forth above, the Disclosure Statement is APPROVED.

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The Debtor is directed to file clean versions of the Second Amended Disclosure Statement and Second Amended Plan by no later than **June 21, 2019**.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

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2:17-20662 Sun & Stars Lighting, Inc.

Chapter 7

#5.00 APPLICANT: ELISSA MILLER, Trustee

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 35

Tentative Ruling:

8/20/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,041.81

Total Expenses: \$142.55

International Sureties, LTD: \$13.54

Franchise Tax Board: \$1,675.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

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Chapter 7

Trustee(s):

Elissa Miller (TR)

Pro Se

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Chapter 7

#5.10 APPLICANT: BOND PAYMENTS - International Sureties, LTD

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 35

Tentative Ruling:

8/20/2019

See Cal. No. 5.0, incorporated in full by reference.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

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Chapter 7

#5.20 APPLICANT: ACCOUNTANT - Hahn Fife & Company

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 35

Tentative Ruling:

8/20/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,604

Expenses: \$334.50

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

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#5.30 APPLICANT: Other State or Local Taxes (post-petition) - Franchise Tax Board

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 35

Tentative Ruling:

8/20/2019

See Cal. No. 5.0, incorporated in full by reference.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:18-13131 Dwight Gregory Stephens

Chapter 11

#6.00 Hearing
RE: [125] Confirmation of Chapter 11 plan (Second Amended)

Docket 125

*** VACATED *** REASON: DUPLICATE OF CALENDAR MATTER
NO. 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 21, 2019

Hearing Room 1568

10:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#7.00 Hearing RE: [67] Notice of Motion and Defendants' Motion to Vacate Default Pursuant to F.R.C.P. 60(b)

Docket 0

Tentative Ruling:

8/20/2019

For the reasons set forth below, the Motion to Set Aside Default is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Defendants' Motion to Vacate Default Pursuant to FRCP 60(b) [Doc. No. 67] (the "Motion")
- 2) Trustee's Opposition to Defendants' Jenny Melendez's and Clara Melendez's Motion to Vacate Entry of Default [Doc. No. 70] (the "Opposition")
- 3) Defendants' Reply to Trustee's Opposition to Defendants' Jenny Melendez's and Clara Melendez's Motion to Vacate Entry of Default [Doc. No. 72] (the "Reply")

I. Facts and Summary of Pleadings

On December 10, 2018, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; (2) Turnover; (3) Injunctive Relief; and (4) Sale of a Property in Which a Non-Debtor Asserts an Interest* [Doc. No. 1] (the "Complaint") against Jenny Melendez and Clara E. Melendez (collectively, the "Defendants"). On March 20, 2019, Jenny Melendez, proceeding *in pro se*, filed an Answer to the Complaint. Doc. No. 25.

On April 19, 2019, the Court granted the Trustee's motion for leave to file a *First Amended Complaint* (the "FAC"). At the hearing, Defendant Jenny Melendez appeared and requested that the matter be assigned to mediation. Doc. No. 33. On July 10, 2019, the Court entered an order assigning the matter to mediation. Doc. No. 58. After Defendants failed to Answer the FAC, the Clerk of the Court entered Defendants' defaults.

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CONT... **Jenny Melendez**

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Defendants have retained counsel and move to set aside the defaults. The Motion states that Defendants incorrectly believed that they were not required to file an Answer to the FAC, since Defendants had filed an answer to the original Complaint.

In opposition, the Trustee argues that there is no declaration testimony supporting the Defendants' alleged confusion. The Trustee asserts that the Defendants' failure to Answer the FAC was culpable, since the Summons attached to the FAC clearly stated that an Answer was required. In support of his contention that Defendant Jenny Melendez was not confused, the Trustee points to the fact that the attorney representing Jenny Melendez in her bankruptcy case (but not in the adversary proceeding) withdrew from representation. One of the reasons for the attorney's withdrawal was that Jenny Melendez had consulted with other individuals and was ignoring his advice. According to the Trustee, this indicates that Jenny Melendez had been advised by multiple attorneys regarding bankruptcy issues, and therefore could not have been confused about the legal effect of failing to file an Answer to the FAC.

In reply, Defendants reiterate that they were confused about the legal effect of failing to Answer the Complaint. Defendants assert that this confusion does not constitute culpable conduct.

II. Findings and Conclusions

Civil Rule 55(c)—made applicable to these proceedings by Bankruptcy Rule 7055—provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," the Trustee is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.* However, "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1089 (9th Cir. 2010).

The Trustee has failed to demonstrated that any of the factors applies. Defendants

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have a meritorious defense, the default was not the result of Defendants' culpable conduct, and the Trustee would not be prejudiced by vacatur of the default.

Defendants' Failure to Timely Respond to the FAC Was Not Culpable

A "defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer.... Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decision-making, or otherwise manipulate the legal process is not 'intentional' under our default cases, and is therefore not *necessarily* ... culpable." *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697–98 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001). In addition, a "defendant's conduct [is] culpable ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). The *Ethan Enterprises* court found culpability where the defendants provided the opposing party with an incorrect address, thereby precluding normal service of process. *Id*

Although Defendants received actual notice of the FAC and failed to timely respond, Defendants' actions were negligent, not culpable. Defendant Jenny Melendez did file an Answer to the initial Complaint. Further, Jenny Melendez appeared at the hearing on the Trustee's motion for leave to file the FAC and requested that the matter be assigned to mediation. This demonstrates that Jenny Melendez was sincerely seeking to resolve the litigation, and that her failure to file an Answer to the FAC was not devious or in bad faith. Jenny Melendez's attempts to obtain assistance in responding to the litigation were delayed because the self-help desk in the Woodland Hills division of the Bankruptcy Court is only open one morning every month. Melendez Decl. at ¶ 3. It was not until July 5, 2019—after Defendants' defaults had been entered—that Jenny Melendez was able to meet with M. Jonathan Hayes, who agreed to represent Defendants pro bono. *Id*.

Defendants Have a Meritorious Defense

A party has a meritorious defense if "there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). The burden of demonstrating a meritorious defense "on a party seeking to vacate a default judgment is not extraordinarily heavy." *Knoebber*, 244 F.3d at 700. "All that is necessary to

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satisfy the ‘meritorious defense’ requirement is to allege sufficient facts that, if true, would constitute a defense: ‘the question whether the factual allegation [i]s true’ is not to be determined by the court when it decides the motion to set aside the default. Rather, that question ‘would be the subject of the later litigation.’” *Mesle*, 615 F.3d at 1094.

Defendants have satisfied the meritorious defense requirement by showing that there is some possibility that they will not be found liable on the claims asserted in the FAC after a full trial. Defendants have attached a proposed Answer to the Motion which denies the allegations of the FAC and contains affirmative defenses.

The Trustee Has Not Demonstrated that it Would Be Prejudiced By Vacatur of the Default

"To be prejudicial, the setting aside of a [default] must result in greater harm than simply delaying resolution of the case. Rather, ‘the standard is whether [plaintiff’s] ability to pursue his claim will be hindered.’ *Falk, supra*, 739 F.2d at 463; *see also Thompson, supra*, 95 F.3d at 433–34 (to be considered prejudicial, ‘the delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion’).” *Knoebber*, 244 F.3d at 701. Prejudice exists were vacatur of the default would allow the defendant "to move and hide assets." *Franchise Holding*, 375 F.2d at 926.

The FAC was filed on April 18, 2019. The Clerk of the Court entered Defendants’ defaults on June 11, 2019. The brief delay resulting from Defendants’ initial failure to Answer the FAC does not prejudice the Trustee.

Litigation Deadlines

In view of the vacatur of Defendants’ default, the litigation deadlines previously ordered by the Court shall be continued, as follows:

- 1) Defendants shall file the Answer attached to the Motion by no later than **8/21/2019**.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **10/10/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **1/28/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **2/27/2020**.

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- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **3/17/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **3/24/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **3/28/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **4/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion

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in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **4/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

Conclusion

Based upon the foregoing, the Motion to Set Aside Default is GRANTED. Defendants shall submit an order granting the Motion to Set Aside Default, which shall incorporate this tentative ruling by reference, within seven days of the hearing. The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Jenny Melendez

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jenny Melendez

Pro Se

Defendant(s):

Clara E Melendez, an individual

Represented By
M. Jonathan Hayes

DOES 1-20

Represented By
M. Jonathan Hayes

Jenny Melendez, an individual

Represented By
M. Jonathan Hayes

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#8.00 HearingRE: [485] Application for Compensation for AOE Law & Associates, Debtor's Attorney, Period: 10/5/2015 to 7/23/2019, Fee: \$22,000.00, Expenses: \$912.94. (Egbase, Anthony)

Docket 485

Tentative Ruling:

8/20/2019

For the reasons set forth below, Applicant is awarded fees in the amount of \$22,000.00 and expenses in the amount of \$912.94.

Pleadings Filed and Reviewed:

- 1) Application for Payment of Final Fees and/or Expenses [Doc. No. 485]
- 2) Papers filed in connection with the Motion to Sell Property as set forth below:
 - a) Debtor's Motion for Authority to Sell Estate Property (4702 W. 165th St., Lawndale, CA 90260) Free and Clear of All Liens, Claims, and Interests [Doc. No. 472] (the "Sale Motion")
 - b) Application for Order Setting Hearing on Shortened Notice [Doc. No. 465]
 - c) Order Granting Application for Order Setting Hearing on Shortened Notice [Doc. No. 474]
 - d) Declaration of Shana Y. Stark Regarding Service of Order Granting Application for Order Setting Hearing on Shortened Notice [Doc. No. 477]
- 3) No opposition to the Fee Application is on file

I. Facts and Summary of Pleadings

Deborah Earle (the "Debtor") filed a voluntary Chapter 11 petition on December 9, 2012. On April 25, 2016, the Court confirmed the Debtor's Chapter 11 Plan of Reorganization (the "Plan"). Doc. No. 387. After the Debtor failed to remain in compliance with the reporting requirements imposed by the Office of the United States Trustee (the "UST"), the Court converted the case to Chapter 7. On July 11, 2019, the Court granted the Debtor's motion to reconvert the case to Chapter 11. Doc. No. 476.

On July 25, 2019, the Court granted the Debtor's motion to sell certain real

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property. The Court declined the Debtor's request for authorization to pay the Debtor's counsel approximately \$22,000 in fees directly from escrow. The Court directed counsel to hold such fees in its Attorney/Client Trust Account pending the Court's ruling upon a final application for compensation.

A.O.E. Law & Associates, APC, the Debtor's general bankruptcy counsel ("Applicant"), seeks fees in the amount of \$22,000.00 and expenses in the amount of \$912.94. No opposition to the Application is on file.

II. Findings and Conclusions

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

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CONT... Deborah Earle

Chapter 11

The Court notes that the Debtor has not submitted a declaration in support of the Application. However, the Debtor submitted a declaration supporting the payment of counsel's fees in connection with the prior *Motion for Authority to Sell Estate Property (4702 W. 165th St., Lawndale, CA 90260) Free and Clear of All Liens, Claims, and Interests* [Doc. No. 472].

Having reviewed the Application, the Court approves the requested fees and expenses as reasonable. The Court notes that Applicant has discounted the fees requested by \$16,485.00. Applicant is awarded fees and expenses as follows:

Fees: \$22,000.00

Expenses: \$912.94

Applicant is authorized to release the fees and expenses awarded from its Attorney/Client Trust Account.

Applicant's employment was approved on October 5, 2015. Prior to the effective date of employment, Applicant exhausted a retainer in the amount of \$10,000. To the extent necessary, Applicant's draw-down of the retainer is approved.

Applicant shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By

Anthony Obehi Egbase

Crystle Jane Lindsey

Edie Walters

W. Sloan Youkstetter

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Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19

Docket 2157

*** VACATED *** REASON: CONT'D TO 9-4-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19

Docket 2558

***** VACATED *** REASON: CONT'D TO 9-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19

Docket 2557

***** VACATED *** REASON: CONT'D TO 9-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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10:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#12.00 Status Hearing

RE: [36] Amended Complaint Trustee's First Amended Complaint by Zi Chao Lin on behalf of Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez. (RE: related document(s)1 Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) filed by Plaintiff Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez). (Lin, Zi)

fr. 8-13-19

Docket 36

Tentative Ruling:

8/20/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Jenny Melendez, an individual

Pro Se

Clara E Melendez, an individual

Pro Se

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CONT... Jenny Melendez

Chapter 7

DOES 1-20

Pro Se

Jenny Melendez

Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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Hearing Room 1568

10:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#13.00 HearingRE: [89] Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Bankruptcy Counsel -Chapter 7 Trustee's Notice of Application and Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Bankruptcy Counsel *Nunc Pro Tunc*; Memorandum of Points and Authorities and Statement of Disinterestedness; proof of service (Israel, Eric)

Docket 89

Tentative Ruling:

8/20/2019

For the reasons set forth below, the Employment Application is GRANTED. The Trustee is authorized to employ the Firm on a *nunc pro tunc* basis, effective May 1, 2019.

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Notice of Application and Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Bankruptcy Counsel *Nunc Pro Tunc* [Doc. No. 89] (the "Employment Application")
2. Limited Opposition to Employment of Danning, Gill, Diamond & Kollitz as Trustee's Counsel [Doc. No. 94] (the "Limited Opposition")
3. Supplemental Declaration of Eric P. Israel in Support of Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Counsel [Doc. No. 109] (the "Israel Declaration")
4. Notice of Hearing Re: Chapter 7 Trustee's Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Bankruptcy Counsel *Nunc Pro Tunc* [Doc. No. 111]
5. Chapter 7 Trustee's Reply Memorandum of Points and Authorities in Support of Application to Employ Danning, Gill, Diamond & Kollitz, LLP as General Counsel *Nunc Pro Tunc* [Doc. No. 113] (the "Reply")

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary Chapter 11 petition on

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CONT... Hakop Jack Aivazian

Chapter 7

October 16, 2018. On January 17, 2019, the Court entered an order converting the case to a case under Chapter 7. Shortly thereafter, Brad D. Krasnoff was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On July 3, 2019, the Trustee filed the Employment Application seeking an order authorizing him to employ Danning, Gill, Diamond & Kollitz (the "Firm") as his general bankruptcy counsel on a *nunc pro tunc* basis, effective April 23, 2019. The Trustee states that the delay in submitting the Employment Application is largely attributable to the Debtor's failure to respond to the Trustee's requests for information in a manner sufficient for the Trustee to determine whether there were any assets that could be administered for the benefit of the estate. The Trustee also submitted billing entries through June 30, 2019 as Exhibit 4 to the Employment Application.

The Office of the United States Trustee (the "UST") filed a timely Limited Opposition to the Employment Application asserting the following objections:

- i. The Trustee fails to adequately explain why the Firm's employment should be effective as of April 23, 2019, because the attached billing entries do not contain any entries for services performed prior to June 3, 2019.
- ii. The billing entries raise concerns that the Firm is performing services that the Trustee should be performing himself and the Trustee fails to explain why these services are being performed by the Firm.
- iii. The Trustee has not adequately explained why retention of counsel is necessary in the first instance, given the current available assets to liquidate for the benefit of creditors and, even if counsel is required, the Trustee has not disclosed whether he considered hiring another firm with lower billing rates.

Based on the foregoing, the UST requests that the Court deny the Employment Application under the current terms.

On July 26, 2019, the Firm submitted the Israel Declaration in response to the Limited Opposition. First, Mr. Israel states that the submission of billing entries that only dated back to June 3, 2019, was in error and attributable to the Firm's recent switch to a new billing system. In support of his declaration, Mr. Israel attaches amended billing entries that contain all time entries dating back to April 23, 2019. Second, with respect to the UST's concerns that the Firm is performing administrative

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Hearing Room 1568

10:00 AM

CONT...

Hakop Jack Aivazian

Chapter 7

functions, Mr. Israel explains that the Trustee only asked the Firm to get involved in coordinating insurance after the Debtor's first counsel ignored his requests. Finally, Mr. Israel states that the Trustee still does not know whether there will be any further assets to administer, but that the Firm is now working with Debtor's new counsel to try to determine whether there is any equity in one of the Debtor's real properties.

On August 14, 2019, the Firm submitted a Reply on behalf of the Trustee in response to the Limited Opposition. The Reply largely tracks the Israel Declaration and, accordingly, will not be summarized herein.

II. Findings of Fact and Conclusions of Law

Pursuant to 11 U.S.C. § 327(a), a trustee may employ a professional or professional organization that does not hold or represent an interest adverse to the estate, and that qualifies as a disinterested person, to represent or assist the debtor-in-possession in carrying out the debtor-in-possession duties under Title 11. Pursuant to Bankruptcy Rule 2014, an employment application brought under § 327 must state:

the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a). Additionally, LBR 2014-1(b)(3)(A)-(E) sets forth a list of information to be included in any notice of an employment application.

Having reviewed the Employment Application and the attached Statement of Disinterestedness, the Court finds that the Employment Application contain sufficient information to satisfy the requirements of Bankruptcy Rule 2014 and LBR 2014-1(b)(3).

Additionally, the Court finds it appropriate to grant *nunc pro tunc* employment,

**United States Bankruptcy Court
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CONT... Hakop Jack Aivazian

Chapter 7

effective as of **May 1, 2019**. A *nunc pro tunc* approval of employment "should be limited to situations in which 'exceptional circumstances' exist." *In re Atkins*, 69 F.3d 970, 974 (9th Cir. 1995). "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Id.*

Based on the representations set forth in the Employment Application, Israel Declaration and Reply, the Court will authorize employment effective as of May 1, 2019. The Court agrees that this is an unusual case involving the conversion from Chapter 11 to 7 and the withdrawal of Debtor's counsel following conversion. The Court also notes that the usual practice in this district is to authorize employment effective approximately one-month prior to the application's filing date and that no prejudice has resulted from the additional delay in this case. Accordingly, the Court is satisfied with the explanations provided for failure to obtain approval of the Firm's employment earlier. However, based on the Court's review of the amended billing entries submitted in support of the Israel Declaration, the first entry date is May 1, 2019. Therefore, the record does not support the Trustee's request for employment to be effective earlier than that date.

With respect to the second prong identified above, the Court finds that the Firm's services have benefitted the estate in a significant manner because the Firm is assisting the Trustee in determining whether there are any assets that could be liquidated for the benefit of creditors. The Court acknowledges that there remain uncertainties with respect to any recovery, but the Court balances that uncertainty with the risk the Firm is undertaking in performing services that may not result in any future compensation.

The UST's objection concerning whether the Firm is performing administrative functions that should be performed by the Trustee is preserved and may be reasserted in connection with the reasonableness of any fees sought in connection with any future fee application.

III. Conclusion

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CONT... Hakop Jack Aivazian

Chapter 7

For the reasons set forth above, the Employment Application is GRANTED. The Trustee is authorized to employ the Firm on a *nunc pro tunc* basis, effective May 1, 2019.

The Firm is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 21, 2019

Hearing Room 1568

11:00 AM

2:18-23078 Carlos Enrique Pinal and Zenaida Louise Hernandez

Chapter 7

#100.00 APPLICANT: HEIDE KURTZ, Trustee

Hearing re [26] and [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/20/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$652.28

Total Expenses: \$26.88

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Carlos Enrique Pinal IV

Pro Se

Joint Debtor(s):

Zenaida Louise Hernandez

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 21, 2019

Hearing Room 1568

11:00 AM

CONT... Carlos Enrique Pinal and Zenaida Louise Hernandez

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-25-19; 6-25-19

Docket 1

***** VACATED *** REASON: CONTINUED 10-28-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

**United States Bankruptcy Court
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9:00 AM

CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California Pro Se

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

Adv#: 2:18-01324 Gonzalez v. Marquez et al

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01324. Complaint by Rosendo Gonzalez against Victor Marquez, David Marquez. (Charge To Estate). Summons and Notice of Status Conference in Adversary Proceeding and Adversary Proceeding Cover Sheet (Attachments: # 1 Part 2) Nature of Suit: (14 (Recovery of money/property - other)) (Chung, Toan)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 1-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Defendant(s):

Victor Marquez

Pro Se

David Marquez

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Toan B Chung

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:16-25508 Lempa Roofing Inc

Chapter 7

Adv#: 2:18-01328 Gonzalez v. Home Depot Product Authority, LLC et al

#3.00 Trial Date Set

RE: [9] Amended Complaint - First Amended Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtors Estate; [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - by Anthony A Friedman on behalf of Rosendo Gonzalez against CITIBANK, N.A., Home Depot Credit Services, Home Depot U.S.A., Inc.. (RE: related document(s)1 Adversary case 2:18-ap-01328. Complaint by Rosendo Gonzalez against Home Depot Product Authority, LLC, The Home Depot, Inc., Home Depot Credit Services, Home Depot U.S.A., Inc.. (Charge To Estate). - Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; (3) Avoidance and Recovery of Post-Petition Transfers; and (4) Preservation of Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code § 3439 et. seq. and 11 U.S.C. §§ 547, 548, 549 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) filed by Plaintiff Rosendo Gonzalez). (Friedman, Anthony)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-27-2020 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lempa Roofing Inc

Represented By
Barbara J Craig

Defendant(s):

Home Depot Product Authority, LLC

Pro Se

The Home Depot, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

9:00 AM

CONT... Lempa Roofing Inc

Chapter 7

Home Depot Credit Services

Pro Se

Home Depot U.S.A., Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Anthony A Friedman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:17-13266 Golden Diamond International Inc.

Chapter 7

Adv#: 2:18-01303 Krasnoff, Chapter 7 Trustee v. Complete Business Solutions Group, Inc. et al

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01303. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Complete Business Solutions Group, Inc., ML Factors Funding LLC, Last Chance Funding, Inc., TVT Capital LLC, Finishline Capital, Inc., Karish Kapital LLC, Yellowstone Capital West. (Charge To Estate). Trustee's Complaint for Interpleader Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Singh, Sonia)

Docket 1

***** VACATED *** REASON: CONTINUED 2-24-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Golden Diamond International Inc.	Represented By Maria W Tam
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Defendant(s):

Complete Business Solutions Group,	Pro Se
ML Factors Funding LLC	Pro Se
Last Chance Funding, Inc.	Pro Se
TVT Capital LLC	Pro Se
Finishline Capital, Inc.	Pro Se
Karish Kapital LLC	Pro Se
Yellowstone Capital West	Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee	Represented By
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

9:00 AM

CONT... Golden Diamond International Inc.

Chapter 7

Sonia Singh

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#5.00 Trial Date Set RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission 4) Quiet Title by Peter W Lianides on behalf of James De Arruda against Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi.

Docket 0

***** VACATED *** REASON: CONTINUED 11-25-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:18-18233 Jessie O Unite

Chapter 7

Adv#: 2:18-01325 South Bay Credit Union v. Unite

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01325. Complaint by South Bay Credit Union against Jessie Orden Unite. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Simon, A. Lysa)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 4-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie O Unite

Represented By
Edwin A Barnum

Defendant(s):

Jessie Orden Unite

Pro Se

Plaintiff(s):

South Bay Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Wesley H Avery (TR)

Represented By
Edwin A Barnum

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:18-19418 Eva Diaz

Chapter 7

Adv#: 2:18-01308 LENDMARK FINANCIAL SERVICES, LLC. v. Diaz

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01308. Complaint by The Dunning Law Firm Lendmark Financial Services, LLC against Eva Luz Diaz. false pretenses, false representation, actual fraud)) (Dunning, Donald)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 1-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eva Diaz	Pro Se
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Defendant(s):

Eva Luz Diaz	Pro Se
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Plaintiff(s):

LENDMARK FINANCIAL	Represented By Donald T Dunning
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Trustee(s):

Wesley H Avery (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. United States

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordan Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

United States Department of Health

Represented By
Elan S Levey

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

10:00 AM

2:19-17622 Jesus Cayetano Navor and Norma Edith Valladares-

Chapter 7

#100.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Nissan Altima, VIN: 1N4AL3AP6JC193513 . (Wang, Jennifer)

Docket 11

Tentative Ruling:

8/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

Hearing Room 1568

10:00 AM

CONT... Jesus Cayetano Navor and Norma Edith Valladares- Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jesus Cayetano Navor

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Norma Edith Valladares-Marquez

Represented By
James Geoffrey Beirne

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

10:00 AM

2:19-18115 Cynthia Diane Galindo

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Acura ILX, VIN 19VDE1F34EE005543 . (Mantovani, Bonni)

Docket 9

Tentative Ruling:

8/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 26, 2019

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10:00 AM

CONT... Cynthia Diane Galindo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cynthia Diane Galindo	Pro Se
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Trustee(s):

Carolyn A Dye (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

10:00 AM

2:18-22393 Sharon R Williams

Chapter 7

#102.00 HearingRE: [33] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 18025 VICTORY BLVD, RESEDA, CA 91335 . (Smith, Nathan)

Docket 33

Tentative Ruling:

8/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(1) based on the Debtor's bad faith filing. The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Tangel Brown in support of Motion at paragraph 18.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

10:00 AM

CONT... Sharon R Williams

Chapter 7

Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sharon R Williams

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 26, 2019

Hearing Room 1568

10:00 AM

2:19-18130 Janeal M Babcock

Chapter 7

#103.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Salem Cruise Lite RV .

Docket 7

Tentative Ruling:

8/23/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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10:00 AM

CONT... Janeal M Babcock

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Janeal M Babcock

Represented By
Terrence Fantauzzi

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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2:19-18382 Shoezoo.com, LLC

Chapter 7

#104.00 HearingRE: [19] Amended Motion (related document(s): 16 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: . filed by Creditor Cathay Bank) Motion for Relief from Automatic Stay re: Dkt. 16

Docket 19

Tentative Ruling:

8/23/2019

Tentative Ruling:

For the reasons set forth below, the R/S Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Personal Property) [Doc. No. 19] (the "R/S Motion")
2. Memorandum of Points and Authorities in Support of Cathay Bank's Motion for Relief From the Automatic Stay [Doc. No. 16] (the "Memorandum")
3. Application for Order Setting Hearing on Shortened Notice [Doc. No. 17]
4. Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 20]
5. Declaration of Gerrick M. Warrington re Service of Cathay Bank's Motion for Relief From the Automatic Stay and Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 23]
6. Response to Motion for Relief From Stay Filed by Cathay Bank [Doc. No. 24] ("Debtor's Response")
7. Cathay Bank's Reply to Debtor's Response to Motion for Relief From Stay [Doc. No. 25] (the "Reply")

I. Facts and Summary of Pleadings

Shoezoo.com, LLC (the "Debtor") filed this voluntary Chapter 7 case on July 18, 2019 (the "Petition Date"). Shortly thereafter John J. Menchaca was appointed to

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CONT... Shoezoo.com, LLC

Chapter 7

serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

Summary of R/S Motion

Secured creditor, Cathay Bank (the "Movant"), seeks relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) to pursue its remedies under non-bankruptcy law with respect to all of the Debtor's personal property. Movant states that it holds a blanket security lien against the Debtor's personal property, including, but not limited to, inventory, equipment, accounts, chattel paper, instruments, letters of credit rights, letters of credit documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all patents, trademarks and copyrights, and all proceeds and products thereof (collectively, the "Property").

Movant asserts that cause exists to grant it stay relief under § 362(d)(1) because its interest is not adequately protected. Specifically, Movant states that as of July 12, 2019 its claim against the Debtor totaled \$2,779,345.95, which greatly exceeds the \$1,000,423.26 value the Debtor scheduled for the Property in its Schedule B. Movant further asserts that the Debtor is in default of its loan obligations to Movant and that the Debtor's principals have recently perpetrated fraud against Movant in order to secure additional funding and delay Movant from exercising its rights against the Property. *See* Declaration of Gregory Badura.

Movant further asserts that stay relief is required under § 362(d)(2) because there is no equity in the Property and the Property is not necessary to an effective reorganization because this a chapter 7 liquidation case.

Summary of Debtor's Response

On August 21, 2019, the Debtor filed a timely Response arguing that the R/S Motion should be denied or, alternatively, that the hearing should be continued because Movant failed to properly serve the Debtor at the address designated in its petition as its mailing address. The Debtor concedes that "cause probably does exist for [stay] relief," but argues that Movant should not be excused from complying with applicable local and federal service requirements. The Debtor also argues that Movant's allegations of fraud are inflammatory, prejudicial and not necessary to the

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CONT... Shoezoo.com, LLC

Chapter 7

Court's determination of whether stay relief is warranted.

Summary of Reply

On August 23, 2019, Movant filed a timely Reply arguing that it did properly serve the Debtor at the address designated as its principal place of business (the "PPB Address") and noting that the PPB Address was the address that appeared on the docket because the Debtor incorrectly listed the PPB Address as its mailing address when it set up its address in the CM/ECF system for notice purposes.

Movant also highlights that the Debtor concedes that stay relief is proper and counter's Debtor's argument that its allegations regarding fraud are irrelevant by highlighting that such fraudulent behavior may be relevant for establishing "cause" under § 362(d)(1).

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court finds that, in view of the Debtor's Response, any service deficiencies were harmless and has not resulted in any prejudice to the Debtor. Therefore, the Court finds it appropriate to consider the merits of the R/S Motion.

Cause Exists to Grant Relief Under 11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Based on Movant's unrefuted evidence, the Court finds that Movant is not protected by any equity cushion because the Property is entirely underwater. Therefore, cause exists to grant stay relief under § 362(d)(1).

Cause Exists to Grant Relief Under 11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the

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CONT... Shoezoo.com, LLC

Chapter 7

debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

The Court also finds that cause exists to grant relief under § 362(d)(2). The Debtor does not have any equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case.

III. Conclusion

The tentative ruling is to GRANT the R/S Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that Movant's interest is not protected by an adequate equity cushion and, in fact, that there is no equity in the Property. The Court further finds that the Property is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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CONT... Shoezoo.com, LLC

Chapter 7

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
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Wednesday, August 28, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing re [2878] Motion For Entry Of An Order (I) Fixing A Bar Date For Filing Certain Postpetition Administrative Expense Claims And (Ii) Approving The Form Of Notice Of The Administrative Expense Claims Bar Date

Docket 2878

Tentative Ruling:

8/27/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Entry of an Order (I) Fixing a Bar Date for Filing Certain Postpetition Administrative Expense Claims and (II) Approving the Form of Notice of the Administrative Expense Claims Bar Date [Doc. No. 2878] (the "Motion")
 - a) Supplement to Motion for Entry of an Order Fixing a Bar Date for Filing Certain Postpetition Administrative Expense Claims [Doc. No. 2929]
 - b) Notice of Motion [Doc. No. 2871]
 - c) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2862, 2867, 2868, 2871, and 2872 [Doc. No. 2900]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors move for an order fixing October 4, 2019, as the bar date for filing requests for the allowance of postpetition administrative expenses against the Debtors under §§ 503(b) and 507(a)(2) (an "Administrative Expense Claim"). The Debtors propose that the following entities that hold Administrative Expense Claims should not be required to assert an Administrative Expense Claim (collectively, the

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CONT... Verity Health System of California, Inc.
“Excluded Claims”):

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- 1) Any entity that has already filed a motion requesting allowance of an administrative expense claim pursuant to § 503(b) related to the Postpetition Period;
- 2) A holder of an Administrative Expense Claim related to or incurred during the Postpetition Period that previously has been allowed by order of the Court;
- 3) A holder of an Administrative Expense Claim that has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- 4) Administrative Expense Claims based upon liabilities that the Debtors incur in the ordinary course of their business to providers of goods and services;
- 5) Professional fee claims subject to allowance under § 330;
- 6) Claims relating to the assumption and cure of an executory contract under § 365(b);
- 7) Administrative Expense Claims arising out of the employment by one or more of the Debtors of an individual from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, or reimbursement of business expenses; and
- 8) U.S. Trustee fees.

No opposition to the Motion is in file.

II. Findings and Conclusions

Bankruptcy Rule 3003(c)(3) provides, in relevant part, that “the court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” Bankruptcy Rule 2002(a)(7) requires that potential claimants receive at least 21 days’ notice of the claims bar date. Here, the Debtors will provide the required 21 days’ notice of the Administrative Claims Bar Date.

The Debtors’ proposal that holders of certain Administrative Expense Claims not be required to file a proof of claim is approved. Requiring holders of Excluded Claims to file a proof of claim would needlessly increase the burden upon the estate and would serve no purpose, as the Excluded Claims (1) are not contested by the Debtors, (2) have already been adjudicated, and/or (3) will be adjudicated in the future. For example, there is no reason that individuals who have been employed by the Debtors subsequent to the Petition Date and who have received wage payments in the ordinary

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CONT... Verity Health System of California, Inc. Chapter 11

course of the Debtors' business should be required to file an Administrative Expense Claim.

The Debtors' proposed form of notice of the Administrative Claims Bar Date is approved.

Based upon the foregoing, the Motion is GRANTED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Los Angeles
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Wednesday, August 28, 2019

Hearing Room 1568

11:00 AM

2:19-13797 Liboria Zavalza

Chapter 11

#100.00 Hearing
RE: [17] Motion to Use Cash Collateral Re: 4053 & 4053A Randolph Street,
Huntington Park, CA 90255

fr. 6-4-19

Docket 17

Tentative Ruling:

8/27/2019

For the reasons set forth below, the Cash Collateral Motion is GRANTED on a final basis.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 17] (the "Cash Collateral Motion")
2. Order re: Notice of Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 32] (the "Interim Cash Collateral Order")
3. Debtor's Supplemental in Support of Motion for Order to Use Cash Collateral [Doc. No. 60]
4. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

This is a continued hearing on Liboria Zavalza's motion for authority to use cash collateral generated from the Debtor's lease of a duplex located at 4053 & 4501(A) Randolph Street, Huntington Park, CA 90255 (the "Property"). The Debtor rents out both units and collects monthly rental income totaling \$2,150 from the Property. The Property is subject to a first-priority deed of trust in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2007-3 (the "Bank") in the amount of \$1,185,616.25. **[Note 1]**

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CONT... Liboria Zavalza

Chapter 11

The Court previously approved the Debtor's Proposed Monthly Budget (the "Budget"), which provides for the following expenses to be paid for with the Bank's cash collateral:

Income:	\$2,150.00
Expenses:	
The Bank	(\$1,049.49)
Property Taxes	(\$960.00)
Property Insurance	<u>(\$140.51)</u>
Net Income:	\$0.00

In connection with the original hearing, the Debtor represented that she was trying to rent out an additional room in the Property for \$1,450/month and that once she secured a tenant, she would increase monthly adequate protection payments to the Bank to \$2,469. Accordingly, the Court approved the Budget on an interim basis and directed the Debtor to file a supplemental declaration with respect to those efforts.

On August 14, 2019, the Debtor submitted a timely Supplemental Declaration stating that she had not yet obtained an additional tenant, but that she has increased the rent to current tenants by \$450/month (which the Court presumes the Debtor is paying to the Bank). **[Note 2]**

As of the preparation of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

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11:00 AM

CONT... **Liboria Zavalza**

Chapter 11

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Court finds that the terms of the Cash Collateral Motion and the Budget comply with § 363. The Debtor's use of cash collateral is necessary to preserve the Property and to facilitate the Debtor's reorganization efforts. The Court finds that the Bank's interest in the Property remains adequately protected because there is no evidence in the record to suggest that the Property is declining in value and because the Debtor is making monthly adequate protection payments to the Bank.

III. Conclusion

For the reasons set forth above, the Cash Collateral Motion is GRANTED on a final basis.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: On August 20, 2019, the Court entered an order granting the Debtor's motion to value the Property at \$465,000 and bifurcated the Bank's lien for plan purposes

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CONT... Liboria Zavalza

Chapter 11

pursuant to § 506(a) [*See* Doc. No. 63].

Note 2: If this is not the case, the Debtor must submit a revised budget explaining the proposed use of the additional income and obtain Court authorization of any such expenditures.

6/3/2019

For the reasons set forth below, the Court GRANTS the Cash Collateral Motion on an interim basis. The Debtor is authorized to use the cash collateral on an interim basis through and including August 21, 2019. The Debtor shall make monthly adequate protection payments to the Bank in the amount of \$1,049.49 as set forth in the proposed budget. The Court will conduct a further hearing on the use of cash collateral on **August 28, 2019, at 11:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **August 14, 2019**. Any opposition to the continued use of cash collateral must be submitted by no later than **August 21, 2019**.

Pleadings Filed and Reviewed

5. Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 17] (the "Cash Collateral Motion")
6. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Liboria Zavalza (the "Debtor") filed this voluntary chapter 11 case on April 3, 2019 (the "Petition Date"). On Schedule A, the Debtor listed an ownership interest in a duplex located at 4053 & 4501(A) Raldolph [**Note 1**] Street, Huntington Park, CA 90255 (the "Property"). The Debtor rents out both units and collects monthly rental

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Chapter 11

income totaling \$2,150 from the Property. The Property is subject to a first-priority deed of trust in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2007-3 (the "Bank") in the amount of \$1,185,616.25.

The Debtor seeks an order authorizing the Debtor to use cash collateral in accordance with the terms of the Proposed Monthly Budget (the "Budget") appearing on page 5 of the Cash Collateral Motion. The Budget provides for the following expenses to be paid for with the Bank's cash collateral:

Income:	\$2,150.00
Expenses:	
The Bank	(\$1,049.49)
Property Taxes	(\$960.00)
Property Insurance	<u>(\$140.51)</u>
Net Income:	\$0.00

The Debtor states that she has posted an ad seeking to rent an additional room in the Property for \$1,450/month and that once she secures a tenant she will increase monthly adequate protection payments to the Bank to \$2,469. In support of the Cash Collateral Motion the Debtor attached copies of current lease agreements for both units as well as proof of monthly insurance and property tax expenses.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

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Los Angeles
Judge Ernest Robles, Presiding
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CONT... Liboria Zavalza

Chapter 11

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Here, the Court finds that the terms of the Cash Collateral Motion and the Budget comply with § 363. The Debtor's use of cash collateral is necessary to preserve the Property and to facilitate the Debtor's reorganization efforts. The Court finds that the Bank's interest in the Property is adequately protected because there is no evidence in the record to suggest that the Property is declining in value and because the Debtor has proposed to make monthly adequate protection payments in the amount of \$1,049.49 (with the possibility of an increase to \$2,469).

III. Conclusion

For the reasons set forth above, the Court GRANTS the Cash Collateral Motion on an interim basis. The Debtor is authorized to use the cash collateral on an interim basis through and including August 21, 2019. The Debtor shall make monthly adequate protection payments to the Bank in the amount of \$1,049.49 as set forth in the proposed budget. The Court will conduct a further hearing on the use of cash collateral on **August 28, 2019, at 11:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **August 14, 2019**. Any opposition to the continued use of cash collateral must be submitted by no later than **August 21, 2019**.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at

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Central District of California
Los Angeles
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CONT... Liboria Zavalza

Chapter 11

213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court believes this spelling is in error and that the correct street name is Randolph Street as set forth in the Cash Collateral Motion.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron
Crystle Jane Lindsey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

2:19-15981 Kenneth D Martinez

Chapter 7

#1.00 Motion by Chapter 7 Trustee to Vacate Dismissal Order

Docket 22

***** VACATED *** REASON: PER ORDER ENTERED 8-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth D Martinez

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

2:19-18126 Diego Gerardo Muniz and Maria Hernandez

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 BMW X3, VIN: 5UXWX5C57BLW14277 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

8/28/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtors, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

CONT... **Diego Gerardo Muniz and Maria Hernandez**

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Diego Gerardo Muniz

Represented By
Raj T Wadhvani

Joint Debtor(s):

Maria Hernandez

Represented By
Raj T Wadhvani

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing

RE: [2864] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Theodore Parada MD v Seton Medical Center; 18-CIV-05532 .

Docket 2864

Tentative Ruling:

8/28/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., Seton Medical Center and Theodor Parada, M.D. Granting Motion for Relief from the Automatic Stay* [Doc. No. 2920] (the "Stipulation") is APPROVED. The Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

2:19-19171 Guillermo Luis Calixtro

Chapter 11

#4.00 HearingRE: [6] Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 19830 E Saddle Ridge Ln, Walnut CA 91789 .

Docket 6

Tentative Ruling:

8/28/2019

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate [Doc. No. 6] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 7]
 - b) Order Setting Hearing on Motion for Order Seeking Relief from *In Rem* Provisions of Order Granting Relief from the Automatic Stay Entered in Prior Case [Doc. No. 9]
- 2) Opposition to Debtor's Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate [Doc. No. 27] (the "Opposition")
 - a) Request for Judicial Notice in Support of Opposition [Doc. No. 28]

I. Facts and Summary of Pleadings

Guillermo Luix Calixtro (the "Debtor") filed a *pro se* voluntary Chapter 11 petition on August 6, 2019. On August 7, 2019, the Debtor filed a motion seeking relief from the *in rem* provisions of a May 11, 2018 order lifting the automatic stay as to real property located at 19830 East Saddle Ridge Lane, Walnut, CA 91789 (the "Property") that was entered in the Chapter 13 case of the Debtor's spouse. *See* Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 52, Case No. 2:17-bk-17465-VZ] (the "RFS Order"). Debtor sought a hearing on shortened time on the Motion, citing a foreclosure sale of the Property set for August 15, 2019. On August 7, 2019, the Court set the Motion for hearing on September 3,

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CONT... Guillermo Luis Calixtro

Chapter 11

2019, but enjoined Bayview Loan Servicing, LLC (“Bayview”), the servicing agent that had obtained the RFS Order granting *in rem* relief, from exercising its remedies with respect to the Property pending further order of the Court. Bayview opposes the Motion.

A. Background

On June 9, 2010, the Debtor and his spouse, Tina Calixtro (collectively, the “Debtors”), filed a voluntary Chapter 11 petition, Case No. 2:10-bk-33389-ER (the “First Bankruptcy”). [Note 1] On June 16, 2011, the Court entered an order confirming the Debtors’ Chapter 11 Plan. Doc. No. 74, Case No. 2:10-bk-33389-ER (the “Confirmation Order”). The Plan provided for the Debtors to make monthly payments of \$3,766.93, for a period of 312 months, on account of the indebtedness against the Property. Confirmation Order at 2–3.

On March 5, 2014, the Debtors filed a Postconfirmation Status Report [Doc. No. 97, Case No. 2:10-bk-33389-ER], which stated that the “Debtors are currently unemployed and have no wherewithal to fund their plan.” Postconfirmation Status Report at ¶ 3. The Postconfirmation Status Report further stated that the Debtors did not oppose dismissal of the case. *Id.* at ¶ 6.

On March 24, 2014, the First Bankruptcy was dismissed upon the motion of the United States Trustee (the “UST”), based upon the Debtors’ failure to remain current on quarterly UST fees. Doc. No. 100, Case No. 2:10-bk-33389-ER.

On December 13, 2016, the Debtor only filed a second voluntary Chapter 11 petition, Case No. 2:16-bk-26296-ER (the “Second Bankruptcy”). On April 20, 2017, upon the motion of the UST, the Court dismissed the Second Bankruptcy and imposed a 180-day bar to re-filing. Doc. No. 72, Case No. 2:16-bk-26296-ER. In dismissing the case, the Court found that the Debtor had failed to provide evidence of insurance coverage to the UST, and had routinely filed late or incomplete Monthly Operating Reports. The Court found that the Debtor’s filing of incomplete Monthly Operating Reports prevented the UST from fulfilling its statutory obligation to ensure that debtors-in-possession are acting as fiduciaries for creditors. *See* Final Ruling Granting UST’s Motion to Dismiss [Doc. No. 67, Case No. 2:16-bk-26296-ER].

On June 15, 2017, the Court denied the Debtor’s motion to vacate the 180-day bar to re-filing. Doc. No. 90, Case No. 2:16-bk-26296-ER.

On June 20, 2017, the Debtor’s spouse, Tina Calixtro (“Calixtro”), filed a Chapter 13 petition, Case No. 2:17-bk-17465-VZ (the “Spouse’s Bankruptcy”). On May 11, 2018, Bayview obtained the RFS Order against the Property. The Court found that the

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CONT... **Guillermo Luis Calixtro**

Chapter 11

filing of the bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved multiple bankruptcy cases affecting the Property. RFS Order at ¶ 3.d.2. The Court further found that the Debtor was involved in the fraudulent scheme. *Id.* at ¶ 3.d.3. On June 14, 2018, the Court denied Calixtro's motion for reconsideration of the RFS Order. Doc. No. 75, Case No. 2:17-bk-17465-VZ. On July 24, 2018, the Court dismissed Calixtro's Chapter 13 case. Doc. No. 79, Case No. 2:17-bk-17465-VZ.

B. Summary of the Motion

Debtor seeks relief from the *in rem* provisions of the RFS Order, and argues that such relief is warranted for the following reasons:

- 1) There is equity in the Property and the Debtor will continue to apply for a loan modification.
- 2) Debtor is working as a paralegal and now has monthly income of \$7,500, which is sufficient income to successfully reorganize.
- 3) The *in rem* provisions of the RFS Order should not apply to the Debtor, because the RFS Order was entered in Calixtro's Chapter 13 case. Calixtro is not and has never been a borrower on the loan against the Property.

Debtor also seeks an order imposing the automatic stay as to Bayview and all creditors pursuant to § 362(c)(4).

C. Summary of Bayview's Opposition

Bayview makes the following arguments in Opposition to the Motion:

- 1) To the extent the Motion seeks relief under § 362(c)(4), it is procedurally improper. Section 362(c)(4) does not apply to the Debtor because the Debtor did not have two bankruptcy cases pending within the one year period prior to the filing of the instant case.
- 2) The RFS Order containing the *in rem* provisions was entered by Judge Zurzolo. To the extent the Debtor seeks relief from the *in rem* provisions of the RFS Order, he must obtain such relief from Judge Zurzolo.
- 3) Debtor has not shown good cause for relief from the *in rem* provisions of the RFS Order. The Motion effectively constitutes a motion for reconsideration under Civil Rule 60(b). The Debtor has failed to represent the changed

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Chapter 11

circumstances that are a prerequisite to such relief. The Debtor is not represented by counsel in his Chapter 11 case, so the chances of him being able to successfully confirm a plan are slim. There is no merit to the Debtor's contention that his monthly income of \$7,500 will enable him to successfully reorganize. In the Second Bankruptcy Case, the Debtor's monthly income was \$8,150, yet the Debtor proved unable to reorganize. Bayview's claim against the Property is approximately \$1.2 million. Assuming the Debtor confirmed a Chapter 11 Plan with an interest rate of 6.25%, the Debtor would be required to make monthly payments of \$7,388.61 on the Property, excluding property taxes and insurance.

II. Findings and Conclusions

Section 362(c) limits the extent to which debtors who have been a party to one or more pending bankruptcy cases within the one year period prior to the filing of a subsequent case can receive the protections of the automatic stay in the subsequent case. Section 362(c)(3) applies to debtors who have been a party to one bankruptcy case pending within the one year period prior to the filing of the subsequent case. Section 362(c)(4) applies to debtors who have been a party to two or more cases pending within the one year period prior to the filing of the subsequent case.

The Second Bankruptcy Case filed by the Debtor was dismissed on April 20, 2017. Because the Second Bankruptcy Case was not pending within the one year period prior to the filing of the instant case, neither § 362(c)(3) or § 362(c)(4) apply. The only issue for the Court's consideration is whether the Debtor should be entitled to relief from the *in rem* provisions of the RFS Order.

Section 362(d)(4) provides that the court may grant relief from the automatic stay as to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." Section 362(d)(4) further provides that where properly recorded, any such order granting stay relief "shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or good cause shown, after notice and a hearing." Section 362(d)(4) was added to the Bankruptcy Code in 2005 as a new fourth ground for granting stay relief and was

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Chapter 11

“intended to reduce abusive filings.” *Black v. HSBC Bank (In re Black)*, 514 B.R. 605, 612 (Bankr. E.D. Cal. 2014) (citing H.R. Rep. No. 109-31, pt. 1, at 70 (2005), reprinted in 2005 U.S.C.C.A.N. 88, 138).

First, the Court rejects Bayview’s contention that only Judge Zurzolo, who entered the RFS Order, can determine whether the Debtor is entitled to relief from the *in rem* provisions of that order. In *In re Black*, the court considered the application of the *in rem* provisions of a stay relief order that had been entered by a different bankruptcy court in determining whether a secured creditor had violated the automatic stay. *In re Black*, 514 B.R. at 607. It was not necessary for the *Black* court to refer the matter to the court that had entered the stay relief order. Similarly, this Court has the ability to determine whether the Debtor is entitled to relief from the RFS Order’s *in rem* provisions “based upon changed circumstances or for good cause shown”

Second, the Court rejects the Debtor’s contention that the *in rem* provisions of the RFS Order should not apply to him simply because the RFS Order was entered in Calixtro’s Chapter 13 case. Section 362(d)(4) relief applies “against not only the debtor, but also every non-debtor, co-owner, and subsequent owner of the property.” *Alakozai v. Citizens Equity First Credit Union (In re Alakozai)*, 499 B.R. 698 (B.A.P. 9th Cir. 2013). Because § 362(d)(4) expressly contemplates that the relief it affords will apply against *any entity* asserting an interest in the property, the fact that the RFS Order was entered in Calixtro’s Chapter 13 case, rather than a prior case filed by the Debtor, is not grounds for relief from the RFS Order’s *in rem* provisions.

To be entitled to relief from the *in rem* provisions of the RFS Order, the Debtor must show “changed circumstances” or “good cause.” § 362(d)(4). The Debtor has failed to make the requisite showing.

Debtor’s primary argument is that as a result of a job as a paralegal that he obtained on August 1, 2019, he now has the necessary income to fund a successful Chapter 11 Plan. According to the Debtor’s *Statement of Financial Affairs* (the “SOFA”), he earned \$30,000 in 2017; \$34,500 in 2018; and \$18,500 for the period from January 1, 2019 to August 6, 2019. SOFA [Doc. No. 26] at ¶ 4. According to the Debtor’s *Schedule I: Your Income* [Doc. No. 26] (“Schedule I”), his monthly income is now \$9,000, consisting of \$5,000 in wages earned as a paralegal, \$3,500 on account of a family contribution, and \$500 for providing services as a notary.

The Debtor’s declaration filed in support of the Motion (the “Debtor’s Decl.”) [Doc. No. 6] is not consistent with the Debtor’s schedules. The Debtor’s Decl. provides that he earns \$7,500 per month as a paralegal, not \$5,000 as set forth in the Debtor’s schedules. Debtor’s Decl. at ¶ 6. The Debtor’s Decl. further provides that the

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Chapter 11

Debtor is earning additional income as a licensed real estate agent. *Id.* The Debtor's Schedule I contains no mention of income earned as a real estate agent.

The "debtor has a duty to prepare schedules carefully, completely, and accurately." *In re Mohring*, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994). Here, the Debtor's inability to provide the Court consistent information regarding basic details such as the amount of his monthly income casts serious doubt upon the Debtor's ability to successfully confirm a Chapter 11 plan. To successfully confirm a Chapter 11 plan, the Debtor must comply with numerous and highly technical requirements set forth in § 1129. The Debtor is attempting to achieve this process without the assistance of bankruptcy counsel.

The Motion contains further inaccuracies. The Debtors' Decl. states in bold type that "Tina Calixtro is not and never been [sic] on the LOAN for the property at 18930 E. Saddle Ridge Ln., Walnut, CA 91789." Debtor's Decl. at ¶ 6. This assertion is contradicted by the Deed of Trust against the Property, which defines the "Borrower[s]" as "Guillermo Calixtro and Tina Calixtro, Husband and Wife as Joint Tenants." Doc. No. 24, Ex. A.

The Debtor's inability to complete simple tasks, such as filing declarations containing accurate information and supplying the Court with consistent information regarding the basic details of his finances, shows that he will be unable complete the much more complex task of confirming a Chapter 11 plan.

The United States Trustee (the "UST") has filed a motion to convert the Debtor's case to Chapter 7, pursuant to § 1112(b), based upon the Debtor's failure to comply with UST reporting requirements. (The UST's motion is set for hearing on September 24, 2019, at 10:00 a.m.) According to the UST, the Debtor has failed to furnish the following information:

- 1) Sufficient evidence of closing of all pre-petition bank accounts including:
 - a) Closing bank statements; and/or
 - b) Bank account information in the Chapter 11 compliance declaration.
- 2) Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts (general, payroll, and tax), including a copy of the debtor-in-possession check for each account.
- 3) Sufficient evidence of current insurance coverage including:
 - a) The declaration page for each policy; and/or
 - b) Insurance information in the Chapter 11 Compliance declaration.

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CONT...

Guillermo Luis Calixtro

Chapter 11

- 4) A projected cash flow statement for the first ninety days of operation under Chapter 11.
- 5) A Statement of Major Issues and Timetable Report.
- 6) Copies of two years of state and federal income tax returns and the most recent payroll and sales tax returns.

See generally Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 17] (the “§1112(b) Motion”).

The UST further states that the Debtor has failed to pay quarterly fees since the filing of the petition. *Id.*

The Debtor’s failure to comply with UST reporting requirements further demonstrates his inability to successfully reorganize. Local Bankruptcy Rule (“LBR”) 2015-2(a)(1) provides: “The ... debtor in possession ... must timely provide the United States Trustee with financial, management and operational reports, and such other information requested by the United States Trustee pursuant to the *Guidelines and Requirements for Chapter 11 Debtors in Possession* as necessary to properly supervise the administration of a Chapter 11 case.” Debtors are under a continuing obligation to comply with all requirements imposed by the UST. Failure to timely comply is grounds for dismissal. If debtors do not timely submit the required information, the UST cannot effectively carry out its oversight responsibilities under 28 U.S.C. §586. There is nothing in the statute that says that debtors may ignore their compliance obligations until receiving a warning from the UST. By commencing a Chapter 11 petition, the Debtor voluntarily accepted the responsibility of complying with all applicable laws and regulations, including reporting obligations imposed by the UST’s office. If the Debtor cannot fulfill these basic reporting obligations, he will be unable to accomplish the much more difficult task of confirming a Chapter 11 plan.

In support of his contention that he has the ability to reorganize, the Debtor states that his monthly income is \$9,000. A significant portion of this income—\$3,500—consists of a family contribution. A plan funded by a significant family contribution may be feasible, but only where “evidence in support of the contribution is submitted.” *In re Deutsch*, 529 B.R. 308, 312 (Bankr. C.D. Cal. 2015) [Note 2]. Further, “[r]eliance on contributions from family is disfavored, but not prohibited.” *Id.*

Here, the Debtor has not submitted any evidence in connection with the Motion showing that he will consistently receive \$3,500 in monthly income from family members. Without such income, the Debtor will not have the ability to reorganize.

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CONT... **Guillermo Luis Calixtro**

Chapter 11

The Debtor's schedules provide that his monthly expenses are \$8,474. Absent the anticipated family contribution, the Debtor's monthly income is only \$5,500.

The Property has been the subject of two Chapter 11 cases and one Chapter 13 case during the past nine years. All these cases were dismissed. The Second Bankruptcy Case was dismissed with a 180-day bar against refiling. The Debtor has had multiple opportunities to reorganize. He has failed to demonstrate changed circumstances showing that his latest attempt to reorganize will be any more successful than the past failed attempts. The Debtor is not entitled to relief from the *in rem* provisions of the RFS Order.

By separate order, the Court will require the Debtor to appear and show cause why the instant Chapter 11 case should not be dismissed, pursuant to § 1112(b).

Based upon the foregoing, the Motion is DENIED.

Note 1

Prior to the First Bankruptcy, the Debtor sought bankruptcy protection on November 6, 1992, Case No. 92-bk-52728. Doc. No. 1, Form 101, Case No. 2:19-bk-19171-ER. The Debtor's schedules do not specify the chapter of the 1992 bankruptcy case.

Note 2

In re Deutsch addressed the feasibility of a Chapter 13 plan. Its holding applies here, since the feasibility requirement for a Chapter 11 plan propounded by an individual is comparable to the feasibility requirement for a Chapter 13 plan.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Guillermo Luis Calixtro

Pro Se

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, September 3, 2019

Hearing Room 1568

10:00 AM

2:19-18071 Elmer Aaron Delgado, Jr.

Chapter 7

#5.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Honda Fit, VIN: 3HGGK5H60JM719294 . (Wang, Jennifer)

Docket 7

Tentative Ruling:

8/28/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Elmer Aaron Delgado, Jr.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Elmer Aaron Delgado Jr.

Represented By
Michael H Colmenares

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:17-14364 Silla Automotive, LLC

Chapter 7

#1.00 HearingRE: [180] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice Of Motion And Motion Of Chapter 7 Trustee For An Order Approving The Sale Of Certain Assets Of The Debtors Estate Free And Clear Of Liens, Claims, Interests, And Encumbrances Pursuant To 11 U.S.C. §§ 105 And 363 And Related Relief; Memorandum Of Points And Authorities; And Declaration Of Richard K. Diamond In Support Thereof, with Proof of Service (Shechtman, Zev)

Docket 180

Tentative Ruling:

9/3/2019

For the reasons set forth below, the sale of the Remnant Assets to Oak Point for \$5,200.00 is APPROVED.

Key Sale Terms:

- 1) Proposed purchaser: Oak Point Partners, LLC
- 2) Property for sale: Remaining assets of the estate, excluding cash, Goods (as that term is defined in § 9-102(a)(44) of the Uniform Commercial Code), and the purchase price of the remaining assets
- 3) Purchase price: \$5,200.00
- 4) Overbids: No overbids have been timely submitted

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Chapter 7 Trustee for an Order Approving the Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363 and Related Relief [Doc. No. 180] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 181]
 - b) Notice of Sale of Estate Property [Doc. No. 183]
- 2) Reply and Statement in Support of [Sale Motion] [Doc. No. 184]

I. Facts and Summary of Pleadings

Silla Automotive, LLC (the "Debtor") filed a voluntary Chapter 7 petition on

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CONT... Silla Automotive, LLC

Chapter 7

April 10, 2017. The Chapter 7 Trustee (the "Trustee") moves to sell the remaining assets of the estate, excluding (1) cash, (2) any and all Goods (as that term is defined in § 9-102(a)(44) of the Uniform Commercial Code), and (3) the purchase price of the remaining assets (the property to be sold, the "Remnant Assets"). The only Remnant Assets of which the Trustee is aware are certain auto parts. The Trustee previously retained a broker to sell the auto parts, but to date has received only \$2,800.00 from such sales. The Trustee has been advised that the remaining auto parts are dated and that sales of those parts can only be made occasionally. The Trustee asserts that the sale of the Remnant Assets provides an efficient means to close the case, while avoiding the expense associated with reopening the case in the future to administer later-discovered assets.

The proposed purchaser is Oak Point Partners, LLC ("Oak Point"). The purchase price is \$5,200.00. The sale is subject to overbids; however, no overbidders contacted the Trustee within the deadline set forth in the Sale Motion. Accordingly, the Trustee requests that appearances at the Sale Hearing be waived.

No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

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CONT... Silla Automotive, LLC

Chapter 7

The Trustee's UCC search has not revealed any liens asserted against the Remnant Assets. To the extent that any liens are asserted against the Remnant Assets in the future, the Court finds that any such lien would be in bona fide dispute. Pursuant to § 363(f)(4), the sale is free and clear of any liens which may exist against the Remnant Assets.

The Sale Motion advised overbidders that they were required to contact the Trustee by no later than fourteen days prior to the hearing if they wished to submit an overbid. The Sale Motion advised interested parties that no auction would take place if the Trustee did not receive a timely bid from a qualified overbidder. The Trustee has filed a statement indicating that no overbids have been received. Therefore, the Court will approve the sale of the Remnant Assets to Oak Point, will not conduct an auction, and will waive appearances at the Sale Hearing.

Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall be effective immediately upon entry.

Having reviewed the declaration of the Trustee submitted in support of the Sale Motion, the Court finds that the sale to Oak Point was negotiated at arm's length and in good faith. Oak Point is entitled to the protections of § 363(m) as a good-faith purchaser.

Based upon the foregoing, the Sale Motion is GRANTED. Within seven days of the hearing, the Trustee shall submit a conforming order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

Trustee(s):

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10:00 AM

CONT... Silla Automotive, LLC
Richard K Diamond (TR)

Represented By
Howard Kollitz
Zev Shechtman
Sonia Singh

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#2.00 Hearing re [81] professional fees

Docket 0

***** VACATED *** REASON: CONTINUED 10-8-19 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#3.00 Hearing re [82] *First Amended Disclosure Statement Describing Debtors First Amended Chapter 11 Plan Of Reorganization Dated July 26, 2019*

FR. 7-17-19

Docket 0

Tentative Ruling:

9/3/2019

For the reasons set forth below, approval of the Amended Disclosure Statement is DENIED. The Debtors are directed to file a second amended disclosure statement and second amended plan by no later than **September 20, 2019** and self-calendar a hearing for **October 16, 2019 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Individual Debtors' First Amended Disclosure Statement in Support of First Amended Plan of Reorganization [Doc. No. 82] (the "Amended Disclosure Statement")
2. Individual Debtor's [sic] Chapter 11 First Amended Plan of Reorganization [Doc. No. 83] (the "Amended Plan")
3. Debtors' Notice of Hearing on Adequacy of First Amended Disclosure Statement Describing Debtors' First Amended Chapter 11 Plan of Reorganization Dated July 26, 2019 [Doc. No. 84]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors"), filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors sought bankruptcy protection after experiencing several years of financial hardship predicated by Mr. Acevedo's unexpected loss of employment. Both Debtors are now employed and generate regular monthly income. The Debtors' primary asset

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$3,100 in monthly income [see Doc. No. 85].

On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors presently seek approval of their First Amended Disclosure Statement (the "Amended Disclosure Statement"). Below is a description of the material provisions of the Debtors' Amended Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$14,529 on the Effective Date. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$7,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of \$1,968, in full, plus 6% interest, within five years from the Petition Date, by making equal monthly installments of \$32.50 beginning on the Effective Date.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

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Central District of California
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Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. Accordingly, the Debtors propose to pay Honda's secured claim in full, plus 6.75% interest, by making monthly installment payments of \$314 over a five-year period. Honda's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$29,776.01. The Debtors propose to pay this class 4% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$19.85. This class is impaired and entitled to vote on the Amended Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- i. Approximately \$8,917.81 anticipated cash on hand on the Effective Date.
- ii. A one-time \$7,000 family contribution.
- iii. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal.

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CONT... Samuel Antonio Acevedo and Lucy Acevedo Chapter 11

1988). “Adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Amended Disclosure Statement is inadequate in the following respects:

1. The Amended Disclosure Statement is not supported by financial projections. The Debtors are directed to submit financial projections for the 5-year duration of the plan in support of the second amended disclosure statement.
2. Part 3.C. states that the Debtors’ future disposable income will be \$39.27, as set forth in Exhibit A1. The Debtors also disclose that their monthly rental income from the Rental Property increased in July 2019. However, it appears that the Debtors have not included the increased rental income figure in their

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Central District of California
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CONT...

Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Exhibit A1 calculations. Therefore, the Debtors should submit a revised Exhibit A1.

3. The proposed distribution for Class 6(b) general unsecured creditors is not clear. Part 1.D states that Class 6(b) creditors will be paid 4% of their allowed claims without interest in equal monthly installments over 5 years. However, the Debtors also discuss payments to this class in terms of quarterly payments. *See* Acevedo Declaration, ¶ 33. The Court also notes that Paragraph 18.c. of Exhibit A1 states that payments to unsecured creditors will be \$39.27. It appears the correct figure is the \$1,191.04 figure (4% of \$29,776.01 = \$1,191.04), but the Debtors should strike the language in Paragraph 18.c of Exhibit A1 that states "(Payment to Unsecured Creditors)," and also clarify whether payments to Class 6(b) will be made on a monthly or quarterly basis.

Additionally, although the following are plan confirmation issues, the Debtors should be aware of the following issues:

1. The Debtors have not attached a declaration from Catalina Vasquez evidencing her financial ability to make the proposed \$7,000 cash contribution. In support of any plan confirmation brief, the Debtors should be prepared to attach evidence to support this payment.
2. The Debtors are proposing to retain their interest in the Rental Property, while only paying general unsecured creditors 4% of their claims and not providing any new value contributions. Accordingly, the Debtors should be aware that they will not be able to satisfy the absolute priority rule unless Class 6(b) votes to accept the Plan.

III. Conclusion

For the reasons set forth above, the approval of the Amended Disclosure Statement is DENIED. The Debtors are directed to file a second amended disclosure statement and second amended plan by no later than **September 20, 2019** and self-calendar a hearing for **October 16, 2019 at 10:00 a.m.**

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Samuel Antonio Acevedo and Lucy Acevedo Chapter 11

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

7/16/2019

For the reasons set forth below, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than **July 26, 2019**, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.**

Pleadings Filed and Reviewed

5. Individual Debtor's [sic] Disclosure Statement in Support of Plan of Reorganization [Doc. No. 65] (the "Disclosure Statement")
6. Individual Debtor's [sic] Chapter 11 Plan of Reorganization [Doc. No. 66] (the "Plan")
7. Debtors' Notice of Hearing on Adequacy of Disclosure Statement Describing Debtors' Chapter 11 Plan of Reorganization Dated May 31, 2019 [Doc. No. 67]
8. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors") filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). Both Debtors are employed and generate regular monthly income. The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$2,450 in monthly income.

On March 13, 2019, the Debtors obtained an order granting their motion to value

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CONT... Samuel Antonio Acevedo and Lucy Acevedo Chapter 11

the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors presently seek approval of their Disclosure Statement. The following provisions are the material provisions of the Debtors' Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$15,968 on the Effective Date. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$6,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of \$1,968 in full over five years from the Petition Date, with 6% interest, in equal monthly installments of \$32.50.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. However, the Debtors are proposing to pay Honda the full amount of its \$19,708.60 claim, plus 6.75% interest, by making monthly installment payments of \$388 over a five-year period, beginning October 1, 2019. Honda's claim is impaired, and it is entitled to vote on the Plan.

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CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$26,044.41. The Debtors propose to pay this class 4% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$18.48. This class is impaired and entitled to vote on the Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- iv. Approximately \$10,477 in anticipated cash on hand on the Effective Date.
- v. A one-time \$6,000 family contribution.
- vi. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments. After deducting expenses and making all of the foregoing proposed Plan payments, the Debtors projections indicate that they will only have approximately \$1/month in net monthly income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” In determining whether a disclosure statement provides adequate information, “the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the “primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.” *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). “According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible.” *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). “Adequate information will be determined by the facts and circumstances of

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CONT... Samuel Antonio Acevedo and Lucy Acevedo Chapter 11

each case.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), accord. *In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement is inadequate in the following respects:

1. The Debtors’ Liquidation Analysis (Disclosure Statement, Part 4, page 5) does not contain adequate information because it appears the only asset the Debtors have included in their "Net liquidation value of Debtors’ assets" is the anticipated cash on hand as of the Effective Date. While the Debtors did attach a copy of their Schedules A/B, they failed to include a comprehensive liquidation analysis for each asset. The Court finds this particularly troubling because there appears to be approximately \$52,521.64 in equity in the Rental

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CONT...

Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Property and the Debtors have not included any analysis to support their conclusion that the Rental Property would have a \$0.00 liquidation value if the case were converted to a Chapter 7

2. The Disclosure Statement does not contain any discussion of the events which led to the bankruptcy filing, therefore creditors are unable to adequately evaluate the risks associated with voting in favor of the Debtors' Plan.
3. The Debtors' proposal to pay Honda the full amount of its Proof of Claim despite the Court's Vehicle Valuation Order bifurcating \$3,731.60 of the claim into an unsecured claim is unsupported by any meaningful explanation. The Debtors appear to be attempting to overpay Honda by paying its \$3,731.60 unsecured claim in full, with interest, while paying other similarly situated unsecured creditors only 4% of their claims. Accordingly, the Debtors' amended disclosure statement either needs to amend its proposed treatment of Honda's claim or provide a meaningful explanation for creditors to evaluation whether this payment is fair and equitable.

For the foregoing reasons, the Disclosure Statement does not contain adequate information and must be amended.

Additionally, although the following are plan confirmation issues, the Debtors should be aware of the following issues:

3. The Debtors have not attached a declaration or declaration(s) from the family member(s) contemplated to make the \$6,000 family contribution payment or any evidence to support the financial ability of that person or persons to make such payment. In support of any plan confirmation brief, the Debtors should be prepared to attach evidence to support this payment.
4. The Debtors' net monthly income after making all anticipated Plan payments is less than \$1. Therefore, the Debtors' plan confirmation brief must include adequate briefing to satisfy this Court that confirmation of the Plan is not likely to be followed by liquidation in the event any unforeseen expenses arise.
5. The Debtors are proposing to retain their interest in the Rental Property, while only paying general unsecured creditors 4% of their claims and not providing any new value contributions. Accordingly, the Debtors should be aware that they will not be able to satisfy the absolute priority rule unless Class 5(b) votes to accept the Plan.

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10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

III. Conclusion

For the reasons set forth above, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than **July 26, 2019**, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.** Oppositions, if any, are due by August 21, 2019. The deadline for the Debtors to file a reply to any timely filed oppositions is August 28, 2019.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#3.10 HearingRE: [85] Motion to Use Cash Collateral

Docket 85

Tentative Ruling:

9/3/2019

For the reasons set forth below, the Cash Collateral Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Case for Order Authorizing Use of Cash Collateral [Doc. No. 85] (the "Cash Collateral Motion")
2. Declaration in Support of Motion to Use Cash Collateral Filed as Docket No. 85 [Doc. No. 88]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors"), filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Property"), which they rent out for an additional \$3,100 in monthly income. The Debtors state that they are holding approximately \$12,196.43 in cash on hand generated from the Property. The Property is subject to a first-priority deed of trust in favor of Wells Fargo Bank (the "Bank") securing a claim in the amount of \$381,367.03. On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45].

The Debtors presently seek an order authorizing the use of cash collateral to make a one-time payment to Debtor's counsel, the Law Offices of Lionel E. Giron ("Counsel"), for payment of recently approved interim fees in the amount of \$8,000. In support of the Cash Collateral Motion the Debtors attached the Court's Interim Fee Order.

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Los Angeles
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CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

In this case, the Court finds that the Bank is over-secured and adequately protected by a 4.3% equity cushion (after deducting costs of sale). The Court further finds that the Bank is adequately protected because there is no evidence in the record to suggest that the Property is declining in value or that the Debtors are not current on their post-petition monthly mortgage obligations to the Bank. Additionally, because an award of interim professional fees is always subject to disgorgement, it does not appear that the Bank's interests will be prejudiced by the proposed use of its cash collateral.

Finally, the Court deems the Bank's failure to file a response or opposition to the Cash Collateral Motion as its consent to the granting of the motion pursuant to Local

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Los Angeles
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CONT... Samuel Antonio Acevedo and Lucy Acevedo
Bankruptcy Rule 9013-1(h).

Chapter 11

III. Conclusion

For the reasons set forth above, the Cash Collateral Motion is GRANTED.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19

Docket 2144

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [1869] Cure Objection Asserted by Experian Health fka Passport Health Communications Inc

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1869

Tentative Ruling:

9/3/2019

No appearances required. This Cure Objection has settled. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Experian Health fka Passport Health

Represented By
Joseph D Frank
Alan I Nahmias

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**
fr. 4-17-19; 6-5-19, 8-7-19

Docket 1881

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1882

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By
Schuyler Carroll
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1933] Cure Objection Asserted by **Angeles IPA A Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1933

Tentative Ruling:

9/3/2019

No appearances required. This Cure Objection has settled. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Angeles IPA A Medical Corporation

Represented By
Mark A Neubauer

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1930

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By
Jeffrey C Krause
Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1873

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1949

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19

Docket 1965

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 2058

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1954

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1850

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1940

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1849

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**
fr. 4-17-19; 6-5-19, 8-7-19

Docket 1863

***** VACATED *** REASON: CONTINUED 9-30-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1866

***** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1857

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19

Docket 1890

*** VACATED *** REASON: CONTINUED 9-30-2019 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00

Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19; 8-7-19

Docket 2579

*** VACATED *** REASON: CONTNUED 10/8/19 AT 10:00 A.M.

Tentative Ruling:

9/3/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19

Docket 2157

*** VACATED *** REASON: CONTINUED 9-25-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19

Docket 2557

***** VACATED *** REASON: CONTINUED 9-25-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19

Docket 2558

***** VACATED *** REASON: CONTINUED 9-25-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#26.00 HearingRE: [2913] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances; Memorandum of Points and Authorities; Declaration of Tania M. Moyron

Docket 2913

Tentative Ruling:

9/3/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 2913] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2893 and 2913 [Doc. No. 2294]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Notice of Motion and Second Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 2316]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On December 28, 2018, the Court entered an order extending the exclusive period within which the Debtors could file and solicit votes on a plan of reorganization from December 29, 2018 and February 27, 2019, to April 28, 2019 (filing a plan) and June 27, 2019 (obtaining acceptances). Doc. No. 899. On June 7, 2019, the Court entered

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

an order further extending the exclusivity period to August 26, 2019 (filing a plan) and October 25, 2019 (obtaining acceptances). Doc. No. 2520.

The Debtors move to further extend the exclusivity period to October 25, 2019 (filing a plan) and December 24, 2019 (obtaining acceptances), without prejudice to the Debtors' ability to seek further extensions.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Motion. No other opposition to the Motion is on file.

II. Findings and Conclusions

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988). A "transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution." *Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002). In determining whether cause exists to extend the exclusivity period, courts consider a variety of factors, including:

- 1) the size and complexity of the case;
- 2) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- 3) the existence of good faith progress toward reorganization;
- 4) the fact that the debtor is paying its bills as they become due;
- 5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- 6) whether the debtor has made progress in negotiations with its creditors;
- 7) the amount of time which has elapsed in the case;
- 8) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
- 9) whether an unresolved contingency exists.

In re Dow Corning Corp., 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997).

The Court finds that cause exists to further extend the exclusivity period to

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

October 25, 2019 (filing a plan) and December 24, 2019 (obtaining acceptances), as requested by the Debtors. First, these are complex cases. In addition to bankruptcy law, the Debtors' sale of their hospitals implicates issues of healthcare regulatory law, labor law, and mergers and acquisitions law. Second, the Debtors have made significant progress in these cases. The Debtors' sale of O'Connor Hospital ("O'Connor") and Saint Louise Regional Hospital ("Saint Louise") to the County of Santa Clara closed on February 28, 2019. On May 2, 2019, the Debtors obtained approval of the sale of substantially all the assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center (including Seton Coastside) to Strategic Global Management, Inc. ("SGM" and the "SGM Sale," respectively). Doc. No. 2306.

Third, the Debtors require additional time to negotiate a plan of reorganization. The Debtors have submitted the SGM Sale to the review of the California Attorney General, which review remains ongoing. The timing of the closing of the SGM Sale affects any plan the Debtors could propose.

Fourth, the Debtors are paying their ordinary course administrative expense as they come due. As a result, creditors are not prejudiced by the requested extension.

Fifth, the Debtors have demonstrated reasonable prospects for filing a viable plan. The Debtors have sold two of their hospitals and have obtained approval of the sale of their remaining hospitals. The Debtors' ability to execute on the sale process shows that they will be able to propose a viable plan.

Sixth, the Debtors have made progress in negotiations with creditors. The Debtors have prepared drafts of a Plan and Disclosure Statement, and have discussed issues relating to the Plan with the Committee and other stakeholders.

Seventh, the cases have not been pending for an unreasonable amount of time in view of their complexity. The cases have been pending for approximately one year.

Eighth, the Debtors did not seek the extension to pressure creditors. The Committee does not object to the requested extension and no other creditors have objected.

Ninth, various unresolved contingencies exist, the most significant of which is the need to close the SGM Sale.

In sum, consideration of the *Dow Corning* factors supports the extension of exclusivity requested by the Debtors. The Motion is GRANTED in its entirety.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#27.00 HearingRE: [2893] Motion for Order Authorizing Disposal of Patient Records;
Memorandum of Points and Authorities; Declaration of Johnnette Chong

Docket 2893

Tentative Ruling:

9/3/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Order Authorizing Disposal of Patient Records [Doc. No. 2893] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2893 and 2913 [Doc. No. 2938]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Order Authorizing Disposal of Patient Records [Doc. No. 2933]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors move for authorization to dispose of certain patient records in the manner set forth in § 351. The medical records at issue are medical records of patients who were minors (the "Minors' Patient Records") when treated at the general acute care hospital (the "Hospital") operated by Robert F. Kennedy Medical Center ("RFKMC"). The Hospital closed fifteen years ago. Debtor VHS is in possession of the RFKMC medical records because when the Hospital closed in 2004, the records were retained by the Debtors' predecessor, the Daughters of Charity Health System. The Debtors are paying for storage of at least 16,591 Minors' Patient Records at a cost of \$3,000 per year.

The Official Committee of Unsecured Creditors (the "Committee") has no

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CONT... Verity Health System of California, Inc.

Chapter 11

opposition to the Motion. No other opposition to the Motion is on file.

II. Findings and Conclusions

Section 351 provides:

If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

(1) The trustee shall—

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not

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CONT...

Verity Health System of California, Inc.

Chapter 11

claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

(A) if the records are written, shredding or burning the records; or

(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.

Here, the Debtors intend to comply with all requirements of § 351 with respect to the Minors' Patients Records. Specifically, the Debtors will:

- 1) Publish notice of the proposed disposal of the Minors' Patient Records in a newspaper of general circulation in Los Angeles (the "Published Notice");
- 2) Within 180 days of the Published Notice, notify patients and/or insurance carriers of their right to claim the applicable records;
- 3) Request permission from the United States Department of Health and Human Services ("DHHS") to deposit any unclaimed records with the DHHS;
- 4) To the extent that records remain unclaimed and/or are not accepted for deposit with the DHHS, destroy the records in the manner specified in § 351(3).

The Minors' Patient Records impose an unnecessary financial burden upon the Debtors' estates. The Debtors intend to dispose of the Minors' Patient Records in the manner specified in § 351. The Motion is GRANTED in its entirety.

The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Verity Health System of California, Inc.

Chapter 11

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#28.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare and Medi-Cal Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19

Docket 0

***** VACATED *** REASON: Cont'd to 9-25-2019 @ 10:00 a.m.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#100.00 APPLICANT: John J Menchaca, Trustee

Hearing re [160] and [161] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

9/3/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$164,323.04 [Note 1]

Total Expenses: \$3,628.80 [Note 2]

U.S. Bankruptcy Court charges: \$1,250.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Because the Trustee received an interim payment of fees on December 20, 2018 [Doc. No. 128], no fees remain to be paid to the Trustee.

Note 2

Because the Trustee received an interim payment of expenses in the amount of

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CONT... SB 246 & Cebada Group Inc Chapter 7

\$1,840.50 on December 20, 2018 [Doc. No. 128], only \$1,788.30 in expenses remain to be paid to the Trustee.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#101.00 APPLICANT: Levene Neale Bender Yoo & Brill, LLP, Attorney

Hearing re [160] and [161] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

9/3/2019

Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (fees previously awarded on an interim basis are now confirmed as final):

Fees: \$452,584.50 (consisting of \$420,272.00 awarded on an interim basis on December 20, 2018 [Doc. No. 128]; \$4,156.00 awarded on an interim basis to Robinson, Diamant, and Wolkowitz, which merged with applicant on January 1, 2010 [Doc. No. 128]; and \$28,156.50 sought in connection with this application)

Expenses: \$15,562.08 (consisting of \$14,914.51 awarded on an interim basis on December 20, 2018 [Doc. No. 128]; \$279.82 awarded on an interim basis to Robinson, Diamant, and Wolkowitz, which merged with applicant on January 1, 2010 [Doc. No. 128]; and \$367.75 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... SB 246 & Cebada Group Inc

Chapter 7

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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11:00 AM

2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#102.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing re [160] and [161] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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11:00 AM

2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#103.00 APPLICANT: Menchaca & Company, LLP, Accountant

Hearing re [160] and [161] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

9/3/2019

Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (fees previously awarded on an interim basis are now confirmed as final):

Fees: \$61,690.00 (consisting of \$12,349.00 awarded on an interim basis on July 14, 2011 [Doc. No. 80], \$40,473.00 awarded on an interim basis on December 20, 2018 [Doc. No. 128], and \$8,868.00 sought in connection with this application)

Expenses: \$314.07 (consisting of \$163.73 awarded on an interim basis on July 14, 2011 [Doc. No. 80], \$103.04 awarded on an interim basis on December 20, 2018 [Doc. No. 128], and \$47.30 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By

Philip L Nadler - INACTIVE -

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CONT... SB 246 & Cebada Group Inc

Chapter 7

Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By

Jeremy Faith

Edward M Wolkowitz

Lindsey L Smith

Jacqueline L James

Carmela Pagay

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2:14-18528 Eric E Margerie

Chapter 7

#104.00 APPLICANT: DAVID M GOODRICH, Trustee

Hearing re [286] and [287] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/3/2019

On June 8, 2017, the Court entered an *Order on Final Fee Applications Allowing Payment of: (1) Court and U.S. Trustee Fees; and (2) Final Fees and Expenses of the Trustee and Professionals* [Doc. No. 276] (the "Final Fee Order"). On August 10, 2017, the Chapter 7 Trustee (the "Trustee") filed a Final Account, certifying that the estate had been fully administered. On September 22, 2017, the case was closed.

On May 17, 2018, upon the motion of the United States Trustee (the "UST"), the case was reopened so that the Trustee could file an amended Trustee's Final Report. The amendment was necessary because the Trustee had inadvertently omitted a Chapter 11 administrative claim asserted by Montgomery Management Company ("Montgomery") in the amount of \$38,800.00.

The Amended Trustee's Final Report (the "Amended TFR") provides for a payment of \$17,761.33 to Montgomery on account of its \$38,800.00 administrative claim. The Trustee's treatment of Montgomery's administrative claim is approved.

Because the estate is administratively insolvent, the amount to be paid to the Trustee and the professionals employed by the estate will be reduced to enable partial payment of Montgomery's administrative claim. The Trustee has already made interim payments to the estate's professionals in accordance with the Final Fee Order.

No objection has been filed in response to the Amended TRF. The court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$6,752.45 (only \$3,752.45 to be paid as a result of the estate's administrative insolvency)

Total Expenses: \$13.25 (to be paid in full)

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CONT... Eric E Margerie

Chapter 7

The total allowed fees of professionals remain as set forth in the Final Fee Order. Total payments to professionals have been reduced given the estate's administrative insolvency. The Trustee's interim payments to the estate's professionals, as set forth in the Amended TFR, is approved, as follows:

Trustee's Counsel, Havkin & Shrago

Total fees allowed: \$51,178.37

Interim fee payments to date: \$45,178.37 (no further amounts to be paid)

Total expenses allowed: \$408.51

Interim expense payments to date: \$408.51 (no further amounts to be paid)

UST Fees

Total allowed: \$625.00

Interim payments to date: \$625.00 (no further amounts to be paid)

Trustee's Accountant, Grobstein Teeple, LLP

Total fees allowed: \$750.00

Interim payments to date: \$750.00 (no further amounts to be paid)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Eric E Margerie

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:14-18528 Eric E Margerie

Chapter 7

#105.00 APPLICANT: Grobstein Teeple LLP, Accountant

Hearing re [286] and [287] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 104, above.

Party Information

Debtor(s):

Eric E Margerie

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:14-18528 Eric E Margerie

Chapter 7

#106.00 APPLICANT: Havkin & Shrago, Prior Attorney for Trustee

Hearing re [286] and [287] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 104, above.

Party Information

Debtor(s):

Eric E Margerie

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:14-18528 Eric E Margerie

Chapter 7

#107.00 APPLICANT: Fees, United States Trustee

Hearing re [286] and [287] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 104, above.

Party Information

Debtor(s):

Eric E Margerie

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:14-18528 Eric E Margerie

Chapter 7

**#108.00 APPLICANT: Administrative Rent (post-petition storage fees, leases) -
Montgomery Management Company**

Hearing re [286] and [287] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 104, above.

Party Information

Debtor(s):

Eric E Margerie

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-14051 Manouk Mesropyan

Chapter 7

#109.00 APPLICANT: Wilton Robinson, Accountant

Hearing re [53] and [54] Trustee's Final Report and Applications for
Compensation Hearing

Docket 0

Tentative Ruling:

9/3/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,000

Expenses: \$18.35

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manouk Mesropyan

Represented By
Vahe Khojayan

Trustee(s):

Wesley H Avery (TR)

Represented By

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CONT...

Manouk Mesropyan

Joseph E. Caceres

Chapter 7

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11:00 AM

2:18-14051 Manouk Mesropyan

Chapter 7

#110.00 APPLICANT: Bond Payments - International Sureties

Hearing re [53] and [54] Trustee's Final Report and Applications for
Compensation Hearing

Docket 0

Tentative Ruling:

9/3/2019

See Cal. No. 112, incorporated in full by reference.

Party Information

Debtor(s):

Manouk Mesropyan

Represented By
Vahe Khojayan

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph E. Caceres

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2:18-14051 Manouk Mesropyan

Chapter 7

#111.00 APPLICANT: Caceres & Shamash, LLP, Attorney

Hearing re [53] and [54] Trustee's Final Report and Applications for Compensation Hearing

Docket 0

Tentative Ruling:

9/3/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,145

Expenses: \$504.94

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manouk Mesropyan

Represented By
Vahe Khojayan

Trustee(s):

Wesley H Avery (TR)

Represented By

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Joseph E. Caceres

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11:00 AM

2:18-14051 Manouk Mesropyan

Chapter 7

#112.00 APPLICANT: Wesley H Avery, Trustee

Hearing re [53] and [54] Trustee's Final Report and Applications for Compensation Hearing

Docket 0

Tentative Ruling:

9/3/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,950

Total Expenses: \$251.19

International Sureties, LTD: \$16.18

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manouk Mesropyan

Represented By
Vahe Khojayan

Trustee(s):

Wesley H Avery (TR)

Represented By

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CONT...

Manouk Mesropyan

Joseph E. Caceres

Chapter 7

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Hearing Room 1568

11:00 AM

2:18-21480 Rosa Huong Duong

Chapter 7

Adv#: 2:19-01048 Miller, Chapter 7 Trustee v. Mai et al

#113.00 HearingRE: [21] Motion For Summary Judgment Notice of Motion and Motion Of Elissa D. Miller For Summary Judgment or, in the Alternative, for Summary Adjudication of Issues; Memorandum of Points and Authorities, with proof of service, , Plaintiff Elissa D Miller, Chapter 7 Trustee (Werth, Steven)

Docket 21

Tentative Ruling:

Updated on 9/04/19 to reflect an untimely request for a continuance filed by the Defendants:

For the reasons set forth below, the Motion is GRANTED. The Trustee and the Defendants shall appear to advise the Court whether they are willing to stipulate to dismissal of the remaining claims for alter ego and conspiracy.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Elissa D. Miller for Summary Judgment or, in the Alternative, for Summary Adjudication of Issues [Doc. No. 21] (the "Motion")
 - a) Request for Judicial Notice in Support of [Motion] [Doc. No. 22]
 - b) Proposed Statement of Uncontroverted Facts and Conclusions of Law Regarding [Motion] [Doc. No. 23] (the "SUF")
 - c) Declaration of Steven F. Werth in Support of [Motion] [Doc. No. 24]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Rosa Huong Duong (the "Debtor") filed a voluntary Chapter 7 petition on September 28, 2018. On February 11, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for (1) Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548, and 550, (2) Alter Ego, and (3) Conspiracy to Commit Fraudulent Transfer* [Doc. No. 1] (the "Complaint") against Mik H. Mai ("Mai"), DLMRT Corporation, Inc. ("DLMRT"), the Debtor, and Pier Duong ("Duong," and together with Mai, DLMRT, and the Debtor, the "Defendants"). The Complaint seeks to avoid, as actually and constructively fraudulent, the Debtor's

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CONT... **Rosa Huong Duong**

Chapter 7

transfer of property located at 8809 E. Fairview Ave., San Gabriel, CA 91775 (the "Property") to Mai, DLMRT, Duong, and the Debtor. [Note 1] The Complaint also alleges that the Debtor is the alter ego of DLMRT and seeks a judgment that DLMRT is jointly and severally liable for the debts of the Debtor. Finally, the Complaint alleges that the Defendants conspired to commit fraud upon the Debtor's creditors by transferring the Property.

The Trustee moves for summary judgment on her claims for avoidance of the transfer of the Property as actually and constructively fraudulent and for recovery of the Property or the value thereof. The Trustee does not seek summary judgment on her claims for alter ego and conspiracy to commit a fraudulent transfer. In the event the Motion is granted, the Trustee anticipates stipulating with Defendants to dismiss the claims for alter ego and conspiracy to commit a fraudulent transfer.

On the day prior to the hearing on the Motion, Defendants filed an *Opposition to Motion for Summary Judgment and Request for Continuance* [Doc. No. 29] (the "Continuance Request"). Defendants request that the hearing on the Motion be continued for at least eight weeks. Defendants state that they intend to file a motion to allow late responses to Requests for Admission that were served upon the Defendants on April 24, 2019. In support of the Continuance Request, Defendants' counsel, David Lally, states that he has been experiencing severe pain over the past six months in connection with shoulder surgery.

II. Findings and Conclusions

1. The Continuance Request is Denied

The material facts set forth in the declaration of David Lally (the "Lally Decl.") regarding his recent health issues are as follows:

- 1) In March 2019, Lally's shoulder froze. The constant pain prevented him from working for more than ten minutes at a time. Lally Decl. at ¶¶ 23–24. Lally's physicians refused to prescribe pain medication, citing the opioid epidemic. *Id.* at ¶ 25.
- 2) As a result of delays involving issues with insurance and the availability of doctors, Lally did not have surgery until July 2, 2019. *Id.* at ¶¶ 31–32.
- 3) Lally's pain made it difficult for him to sleep, reducing his productivity. *Id.* at ¶ 37 ("Needless to say, the lack of sleep eliminated any motivation to get things done.").

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The Court is sympathetic to Lally's health difficulties and understands that appropriate accommodations must be afforded to counsel who become ill during the course of representation. However, Lally's failure to defend against the Motion cannot be attributed solely to his health challenges, but instead reflects a lack of diligence.

On Tuesday, May 28, 2019, Lally send opposing counsel an e-mail requesting an extension of time to respond to the Requests for Admission (the "RFAs") that had been served on April 24, 2019. Continuance Request, Ex. 4. Lally proposed responding to the RFAs by Wednesday, June 5. *Id.* Opposing counsel consented to the requested extension. *Id.* Lally failed to complete the RFAs by the extended deadline that he had proposed. Nothing in the record indicates that Lally took any further action to secure an additional extension of time to complete the RFAs. That is, Lally was afforded accommodations by opposing counsel on account of his health issues, yet he still failed to complete the RFAs.

On June 25, 2019, Lally appeared before the Court in an unrelated trial matter, *Torices et al. v. Uzeta*, Adv. No. 2:18-ap-01103-ER. Lally represented the defendants and was present the entire day. As the transcript of the trial reflects [Doc. No. 126, Adv. No. 2:18-ap-01103-ER], Lally conducted a cross-examination of two witnesses and a direct examination of one witness. Notwithstanding his health difficulties, Lally was able to effectively represent his clients at the trial.

On July 17, 2019, the Trustee filed the instant Motion. Under the Local Bankruptcy Rules, Lally had until August 14, 2019—approximately one month—to file an opposition on behalf of his clients. The opposition was not due until well after Lally's shoulder surgery took place on July 2, 2019.

Lally states that the pain in his shoulder continued even after the surgery, until the second or third week of August. Lally Decl. at ¶ 33. That does not excuse Lally's dilatory conduct. Lally clearly had the ability to function even before the surgery took place, as demonstrated by his representation at the June 25, 2019 trial. Lally had more than sufficient time to oppose the Motion or, if that proved impossible, seek to withdraw from representation. *See* California Rule of Professional Conduct (providing that a lawyer "shall withdraw from representation of a client if the lawyer's ... physical condition renders it unreasonably difficult to carry out the representation effectively"). Instead, Lally waited until the day before the hearing on the Motion to request a continuance.

Lally's contention that his delay should not be imputed to his clients ignores the fact that attorneys act as agents for their clients. As the Supreme Court explained in *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962):

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There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney."

Id. at 633–34 (internal citation omitted).

Wabash's holding has been subsequently reiterated. In *Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 500 (9th Cir. 1987), the court held that "[t]he plaintiff cannot avoid ... dismissal by arguing that [he] is an innocent party who will be made to suffer for the errors of [his] attorney."

For these reasons, the Continuance Request is DENIED.

2. The Motion is Granted

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). **[Note 2]** The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

On April 24, 2019, the Trustee served Requests for Admissions (the "RFAs")

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upon each of the Defendants. None of the Defendants responded to the RFAs. Civil Rule 36(a)(3) provides that if a response to a RFA is not timely served, the matters set forth in the RFA are admitted against the responding party. By failing to respond to the RFAs, Defendants are deemed to have admitted all of the matters set forth in the RFAs.

LBR 7056-1(f) provides:

In determining any motion for summary judgment or partial summary adjudication, the court may assume that the material facts as claimed and adequately supported by the movant are admitted to exist without controversy, except to the extent that such facts are:

- 1) Included in the "statement of genuine issues," and
- 2) Adequately controverted by declaration or other evidence filed in opposition to the motion.

Defendants have not filed any evidence controverting the facts set forth in the Trustee's *Proposed Statement of Uncontroverted Facts and Conclusions of Law* (the "SUF") filed in support of the Motion. Having reviewed the SUF, the Court finds that the facts set forth therein are supported by adequate evidence. The facts set forth in the SUF are deemed admitted by the Defendants.

For the reasons set forth below, the Court finds that the Trustee is entitled to summary judgment in her favor with respect to her claims for avoidance of the transfer of the Property as actually and constructively fraudulent and for recovery of the Property or the value thereof.

A. Material Facts as to Which there is No Genuine Dispute

Having reviewed the Motion, the pleadings on file, and the evidence submitted in support of the Motion, the Court finds that there is no genuine dispute as to the following material facts:

- 1) On September 6, 2005, the Debtor purchased the Property for \$830,000.
- 2) The Property is subject to a first priority deed of trust to secure payment of a loan in the principal amount of \$616,000, Document No. 05-2136935.
- 3) In connection with the purchase of the Property, the Debtor encumbered the Property with a stand-alone second mortgage in the amount of \$154,000, Document No. 05-2136936.

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- 4) The Property is improved with two residential units.
- 5) Between September 23, 2013 and November 22, 2013, Mai made the following payments to the Debtor, in the aggregate amount of \$169,500:
 - a) \$50,000 on September 23, 2013 (via a personal check which the Debtor cashed);
 - b) \$49,800 on October 22, 2013 (via a personal check which the Debtor cashed);
 - c) \$9,000 on October 23, 2013 (via a personal check which the Debtor cashed);
 - d) \$13,000 on October 24, 2013 (via a personal check which the Debtor cashed);
 - e) \$10,000 on October 24, 2013 (via a wire transfer to the Debtor's account);
 - f) \$9,500 on November 5, 2013 (via a personal check which the Debtor endorsed);
 - g) \$9,640 on November 11, 2013 (via a personal check which the Debtor endorsed); and
 - h) \$9,000 on November 22, 2013 (the record does not specify the manner in which this payment took place).
- 6) At no time did Mai make any payments to the Debtor other than those set forth in ¶ 5, above.
- 7) On June 8, 2016, Mai Tran ("Tran") and Ngan Nguyen ("Nguyen") filed a complaint against the Debtor in the California Superior Court (Case No. EC065291), asserting claims for breach of contract (the "Tran/Nguyen Action").
- 8) On August 3, 2016, default was entered against the Debtor in the Tran/Nguyen Action.
- 9) On October 12, 2016, Mai recorded a Deed of Trust against the Property in the amount of \$800,000 as Document No. 20161248275 (the "October 2016 Deed of Trust") (attached to the Complaint as Ex. 1).
- 10) On December 16, 2016, judgment against the Debtor in the amount of \$192,557.25 was entered in the Tran/Nguyen Action (the "Tran/Nguyen Judgment").
- 11) On March 7, 2017, Tran and Nguyen recorded an abstract of the Tran/Nguyen Judgment against the Debtor in the Los Angeles County Recorder's Office, Instrument No. 20170263062.
- 12) On May 26, 2017, the Debtor filed Articles of Incorporation with the

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California Secretary of State on behalf of DLMRT (the "Articles") (attached to the Complaint as Ex. 2).

- 13) The Articles reflect that the Debtor is the sole director of DLMRT.
- 14) On June 13, 2017, an unsigned Statement of Information was filed with the California Secretary of State on behalf of DLMRT (the "June 2017 Statement") (attached to the Complaint as Ex. 3).
- 15) The June 2017 Statement reflects that the Debtor was the President, Chief Executive Officer, Secretary, Chief Financial Officer, and Agent for Service of Process of DLMRT.
- 16) On February 14, 2018, Debtor executed a Deed in Lieu of Foreclosure with respect to the Property in favor of Mai, purportedly to satisfy \$1,800,000 in unpaid debt (the "Deed in Lieu") (attached to the Complaint as Ex. 5). The Deed in Lieu was recorded with the Los Angeles County Recorder's Office on February 20, 2018, as Document No. 20180166041. At the time of the execution of the Deed in Lieu, the Property had a value in excess of \$1,600,000, and the liens recorded against the Property totaled less than \$800,000.
- 17) On February 22, 2018, Mai executed a Grant Deed transferring his interest in the Property to DLMRT (the "February 2018 Grant Deed") (attached to the Complaint as Ex. 6).
- 18) The Debtor is currently leasing the two residential units on the Property to third parties.
- 19) According to the Debtor's schedules, the Debtor's only significant asset is an apartment located at 1717 South San Gabriel Blvd., Unit L, San Gabriel, CA 91776 (the "San Gabriel Property"). The San Gabriel Property is worth \$340,000 but is subject to liens in the amount of \$338,000.

B. The Trustee is Entitled to Summary Judgment on her Claim to Avoid the Transfer of the Property as Actually Fraudulent, Pursuant to § 548(a)(1)

Section 548(a)(1)(A) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer ... with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made ... indebted."

Because "it is often impracticable, on direct evidence, to demonstrate an actual

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intent to hinder, delay or defraud creditors," courts "frequently infer fraudulent intent from the circumstances surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 805 (9th Cir. 1994). Those badges of fraud include "(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer." *Id.*

Multiple badges of fraud apply. None of the following facts are in dispute: The Debtor transferred the Property, through Mai, to DLMRT, an entity she controlled. As a result, the Debtor retained control of the Property. The Debtor continues to receive rental income from the Property's two residential units. The events relating to the transfer occurred in close proximity to events adverse to the Debtor in the Tran/Nguyen Action. Mai recorded the October 2016 Deed of Trust two months after default was entered against the Debtor in the Tran/Nguyen Action. Two months after recordation of the abstract of the Tran/Nguyen Judgment, the Debtor formed DLMRT. Approximately seven months later, the Debtor effectuated the transfer.

The transfer was a transfer of substantially all of the Debtor's property. At the time of the transfer, there was equity in the Property of approximately \$800,000. The Debtor's schedules indicate that her only significant asset is the San Gabriel Property, which is worth \$340,000 but is encumbered by liens in the amount of \$338,000.

The transfer left the Debtor insolvent. In her schedules, the Debtor identified assets in the approximate amount of \$360,000 and liabilities in the approximate amount of \$970,000.

C. The Trustee is Entitled to Summary Judgment on her Claim to Avoid the Transfer of the Property as Actually Fraudulent, Pursuant to § 544, Applying Cal. Civ. Code § 3439.04(a)(1)

Section 544(b)(1) permits the trustee to "avoid any transfer of an interest of the debtor in property ... that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." The "applicable law" in this case is Cal. Civ. Code § 3439.04(a)(1), California's implementation of the Uniform Voidable Transactions Act (the "UVTA"), which provides:

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(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor....

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

(1) Whether the transfer or obligation was to an insider.

(2) Whether the debtor retained possession or control of the property transferred after the transfer.

(3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

The transfer was actually fraudulent pursuant to § 544, applying Cal. Civ. Code § 3439.04(a)(1). As noted above, there is no dispute that the Debtor retained control of the Property after the transfer and the transfer was of substantially all of the Debtor's assets. In addition, none of the following facts are in dispute: First, the transfer was concealed by the October 2016 Deed of Trust, which falsely stated that Mai had a claim of \$800,000, and was further concealed by the Deed in Lieu, which falsely purported to satisfy an unpaid debt of \$1,800,000 to Mai. In actuality Mai's claim against the Debtor was no more than \$169,500, the amount of the payments that Mai had made to the Debtor. Second, by way of the Deed in Lieu, the Debtor transferred the Property to a lienor (Mai), who subsequently transferred the Property

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to an inside of the debtor (DLMRT). Finally, as discussed in Section II.D., below, there is no dispute that the Debtor did not receive reasonably equivalent value in exchange for the transfer.

D. The Trustee is Entitled to Summary Judgment on her Claim to Avoid the Transfer of the Property as Constructively Fraudulent, Pursuant to § 548(a)(1)(B)

Section 548(a)(1)(B) provides that a transfer is avoidable if the debtor "received less than a reasonably equivalent value in exchange for such transfer" and if the debtor:

- 1) was insolvent on the date that such transfer was made ... or became insolvent as a result of such transfer ...;
- 2) was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
- 3) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
- 4) made such transfer to or for the benefit of an insider ... under an employment contract and not in the ordinary course of business.

§ 548(a)(1)(B).

The transfer was constructively fraudulent pursuant to § 548(a)(1)(B). First, the undisputed facts show that the Debtor did not receive reasonably equivalent value for the transfer. Prior to execution of the Deed in Lieu, Mai made payments to the Debtor of \$169,500. At the time the Debtor executed the Deed in Lieu, the Property had equity of \$800,000. The Debtor received only 21% of the Property's value in exchange for the transfer. That does not constitute reasonably equivalent value. *See Kendall v. Carbaat (In re Carbaat)*, 357 B.R. 553, 561 (Bankr. N.D. Cal. 2006) (holding that the minimum amount required to meet the reasonably equivalent value test is 70% of the value transferred).

Second, as discussed above, there is no dispute that the transfer left the Debtor insolvent.

E. The Trustee is Entitled to Summary Judgment on her Claim to Avoid the Transfer of the Property as Constructively Fraudulent, Pursuant to § 544,

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Applying Cal. Civ. Code § 3439.05(a)

Section 544(b) authorizes the avoidance of transfers under applicable state law. Cal. Civ. Code § 3439.05(a), which is similar to § 548(a)(1)(B), provides that a "transfer made ... by a debtor is voidable as to a creditor whose claim arose before the transfer was made ... if the debtor made the transfer ... without receiving a reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer"

For the same reasons that there is no genuine dispute that the transfer was constructively fraudulent pursuant to § 548(a)(1)(B), there is no genuine dispute that the transfer was constructively fraudulent pursuant to § 544(b), applying Cal. Civ. Code § 3439.05(a).

F. The Trustee is Entitled to Summary Judgment on her Claims Under §§ 550 and 551

Where a transfer has been avoided under §§ 544 or 548, § 550(a) authorizes the Trustee to "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property"

Because the Trustee is entitled to summary judgment on her claims to avoid the transfer under §§ 544 and 548, it follows that the Trustee is entitled to summary judgment on her claim under § 550(a).

Under § 550(a), the Court "has discretion whether to award ... recovery of the property transferred or the value of the property transferred." *USAA Fed. Savings Bank v. Thacker (In re Taylor)*, 599 F.3d 880, 890 (9th Cir. 2010). The statute "does not explain when a court should award ... recovery of the actual property and when it should, in the alternative, award ... recovery of the value of the property." *Id.* at 890. In determining whether to award the Property or its value, the Court must keep in mind the purpose of § 550, which is "to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred." *Alfas v. Wirum (In re Straightline Investments, Inc.)*, 525 F.3d 870, 883 (9th Cir. 2008) (internal citation omitted).

Here, the best way to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred is to order the return of the Property to the Trustee. An award of the value of the Property would not restore the estate to its pre-transfer condition, because there is nothing in the record showing that the Defendants have the ability to satisfy a money judgment.

Where a transfer has been avoided under §§ 544 or 548, § 551 provides that the

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avoided transfer "is preserved for the benefit of the estate but only with respect to property of the estate." Having avoided the transfer under §§ 544 or 548, the Trustee is entitled to summary judgment on her claim to preserve the avoided transfer pursuant to § 551.

Pursuant to § 542(a), Defendants are ordered to turnover the Property to the Trustee within seven days of the date of entry of judgment.

G. Disposition of the Trustee's Remaining Claims for Alter Ego and Conspiracy to Commit a Fraudulent Transfer

The Trustee has represented that in the event summary judgment is granted in her favor, she intends to stipulate with the Defendants to dismiss her remaining claims for alter ego and conspiracy to commit a fraudulent transfer.

In view of the granting of the Motion, the Court finds the contemplated stipulation of dismissal of the remaining claims to be appropriate. The Trustee and the Defendants shall appear to advise the Court whether they are willing to stipulate to dismissal of the alter ego and conspiracy claims.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. The Trustee and the Defendants shall appear to advise the Court whether they are willing to stipulate to dismissal of the alter ego and conspiracy claims. Within seven days of the hearing, the Trustee shall submit (1) a proposed order incorporating this tentative ruling by reference and (2) a proposed judgment. (For purposes of the separate document rule, set forth in Civil Rule 58(a), both an order and a judgment must be submitted.)

Note 1

The Complaint alleges that the Debtor transferred the Property to DLMRT, an entity which she controlled.

Note 2

Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy

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Party Information

Debtor(s):

Rosa Huong Duong

Represented By
Barry E Borowitz

Defendant(s):

Mik H Mai

Represented By
David Brian Lally

DLMRT Corporation Inc., a

Represented By
David Brian Lally

Rosa Huong Duong

Represented By
David Brian Lally

Pier Duong

Represented By
David Brian Lally

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Steven Werth

Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

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Adv#: 2:19-01048 Miller, Chapter 7 Trustee v. Mai et al

#113.10 Status Hearing

RE: [1] Adversary case 2:19-ap-01048. Complaint by Elissa D Miller, Chapter 7 Trustee against Mik H Mai, DLMRT Corporation Inc., a California corporation, Rosa Huong Duong, Pier Duong. (Charge To Estate). Complaint For (1) Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548, and 550, (2) Alter Ego, and (3) Conspiracy to Commit Fraudulent Transfer Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Werth, Steven)

fr. 5-14-19; 8-13-19

Docket 1

Tentative Ruling:

9/3/2019

See Cal. No. 113, above, incorporated in full by reference.

Party Information

Debtor(s):

Rosa Huong Duong

Represented By
Barry E Borowitz

Defendant(s):

Mik H Mai

Pro Se

DLMRT Corporation Inc., a

Pro Se

Rosa Huong Duong

Pro Se

Pier Duong

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Steven Werth

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Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

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2:18-22144 Hakop Jack Aivazian

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#114.00 Hearing re [101] Objection to Claim #1 by Claimant American Express National Bank in the amount of \$5130.00

Docket 101

Tentative Ruling:

9/3/2019

For the reasons set forth below, CONTINUE HEARING to **January 15, 2020 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Notice of Objection to Claim [Doc. No. 101]
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary Chapter 11 petition on October 16, 2018. On January 17, 2019, the Court entered an order converting the case to a case under Chapter 7 [Doc. No. 31]. Shortly thereafter, Brad Krasnoff was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On October 31, 2018, American Express National Bank ("AmEx") filed Proof of Claim No. 1-1 (the "Claim") asserting an unsecured claim of \$5,130 for credit card debt. In support of the Claim, AmEx attached an account statement dated April 28, 2010.

The Debtor presently seeks an order disallowing the Claim in its entirety on the grounds that the Claim is barred by the applicable California 4-year statute of limitations set forth in California Code of Civil Procedure ("CCP") 337. The Debtor states that the last activity on this account was the last payment he made in 2010, which is well beyond the 4-year statute of limitations.

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As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects. The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)).

Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4. However, there are two recognized exceptions to the proposition that a chapter 7 debtor lacks standing to object to a creditor's proof of claim: (1) when disallowance of the claim would create a surplus case, with the excess amounts payable to the debtor; and (2) where the claim at issue would not be dischargeable. *In re Cherne*, 514 B.R. 616, 621 (Bankr. D. Idaho 2014) (citing *Wellman v. Ziino*, 378 B.R. 416 n.5 (B.A.P. 9th Cir. 2007); *In re Lona*, 393 B.R. at 4; *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953)). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

In this case, the Debtor has not even addressed the issue of standing, let alone carried his burden of proof to show that disallowance of the Claim would create a surplus case or that the Claim is otherwise nondischargeable. Additionally, from this Court's review of relevant pleadings, it is premature to determine whether there is a sufficient possibility of a surplus.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to January 15, 2020

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1575 Calendar**

Wednesday, September 4, 2019

Hearing Room 1575

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

at 10:00 a.m. The Debtor is directed to file a brief status report addressing the standing issue by no later than December 27, 2019.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#115.00 Hearing re [102] Objection to Claim #7 by Claimant AMERICAN EXPRESS NATIONAL BANK. in the amount of \$ 1469.12

Docket 102

Tentative Ruling:

9/3/2019

For the reasons set forth below, CONTINUE HEARING to **January 15, 2020 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Notice of Objection to Claim [Doc. No. 102]
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary Chapter 11 petition on October 16, 2018. On January 17, 2019, the Court entered an order converting the case to a case under Chapter 7 [Doc. No. 31]. Shortly thereafter, Brad Krasnoff was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On December 13, 2018, American Express National Bank ("AmEx") filed Proof of Claim No. 7-1 (the "Claim") asserting an unsecured claim of \$1,469.12 for credit card debt. In support of the Claim, AmEx attached an account statement dated July 8, 2010.

The Debtor presently seeks an order disallowing the Claim in its entirety on the grounds that the Claim is barred by the applicable California 4-year statute of limitations set forth in California Code of Civil Procedure ("CCP") 337. The Debtor states that the last activity on this account was the last payment he made in 2010, which is well beyond the 4-year statute of limitations.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects. The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)).

Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4. However, there are two recognized exceptions to the proposition that a chapter 7 debtor lacks standing to object to a creditor's proof of claim: (1) when disallowance of the claim would create a surplus case, with the excess amounts payable to the debtor; and (2) where the claim at issue would not be dischargeable. *In re Cherne*, 514 B.R. 616, 621 (Bankr. D. Idaho 2014) (citing *Wellman v. Ziino*, 378 B.R. 416 n.5 (B.A.P. 9th Cir. 2007); *In re Lona*, 393 B.R. at 4; *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953)). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

In this case, the Debtor has not even addressed the issue of standing, let alone carried his burden of proof to show that disallowance of the Claim would create a surplus case or that the Claim is otherwise nondischargeable. Additionally, from this Court's review of relevant pleadings, it is premature to determine whether there is a sufficient possibility of a surplus.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to January 15, 2020

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

at 10:00 a.m. The Debtor is directed to file a brief status report addressing the standing issue by no later than December 27, 2019.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#116.00 Hearing re [103] Objection to Claim #8 by Claimant AMERICAN EXPRESS NATIONAL BANK. in the amount of \$ 2046.58

Docket 103

Tentative Ruling:

9/3/2019

For the reasons set forth below, CONTINUE HEARING to **January 15, 2020 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Notice of Objection to Claim [Doc. No. 103]
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary Chapter 11 petition on October 16, 2018. On January 17, 2019, the Court entered an order converting the case to a case under Chapter 7 [Doc. No. 31]. Shortly thereafter, Brad Krasnoff was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On December 14, 2018, American Express National Bank ("AmEx") filed Proof of Claim No. 8-1 (the "Claim") asserting an unsecured claim of \$2,046.58 for credit card debt. In support of the Claim, AmEx attached an account statement dated July 7, 2010.

The Debtor presently seeks an order disallowing the Claim in its entirety on the grounds that the Claim is barred by the applicable California 4-year statute of limitations set forth in California Code of Civil Procedure ("CCP") 337. The Debtor states that the last activity on this account was the last payment he made in 2010, which is well beyond the 4-year statute of limitations.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects. The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)).

Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4. However, there are two recognized exceptions to the proposition that a chapter 7 debtor lacks standing to object to a creditor's proof of claim: (1) when disallowance of the claim would create a surplus case, with the excess amounts payable to the debtor; and (2) where the claim at issue would not be dischargeable. *In re Cherne*, 514 B.R. 616, 621 (Bankr. D. Idaho 2014) (citing *Wellman v. Ziino*, 378 B.R. 416 n.5 (B.A.P. 9th Cir. 2007); *In re Lona*, 393 B.R. at 4; *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953)). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

In this case, the Debtor has not even addressed the issue of standing, let alone carried his burden of proof to show that disallowance of the Claim would create a surplus case or that the Claim is otherwise nondischargeable. Additionally, from this Court's review of relevant pleadings, it is premature to determine whether there is a sufficient possibility of a surplus.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to January 15, 2020

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

at 10:00 a.m. The Debtor is directed to file a brief status report addressing the standing issue by no later than December 27, 2019.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#117.00 Hearing re [104] Objection to Claim #9 by Claimant AMERICAN EXPRESS NATIONAL BANK. in the amount of \$ 2149.63

Docket 104

Tentative Ruling:

9/3/2019

For the reasons set forth below, CONTINUE HEARING to **January 15, 2020 at 10:00 a.m.**

Pleadings Filed and Reviewed

1. Notice of Objection to Claim [Doc. No. 104]
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Hakop Jack Aivazian (the "Debtor") filed a voluntary Chapter 11 petition on October 16, 2018. On January 17, 2019, the Court entered an order converting the case to a case under Chapter 7 [Doc. No. 31]. Shortly thereafter, Brad Krasnoff was appointed to serve as the Chapter 7 Trustee (the "Trustee") and continues to serve in that capacity.

On December 14, 2018, American Express National Bank ("AmEx") filed Proof of Claim No. 9-1 (the "Claim") asserting an unsecured claim of \$2,149.63 for credit card debt. In support of the Claim, AmEx attached an account statement dated June 18, 2010.

The Debtor presently seeks an order disallowing the Claim in its entirety on the grounds that the Claim is barred by the applicable California 4-year statute of limitations set forth in California Code of Civil Procedure ("CCP") 337. The Debtor states that the last activity on this account was the last payment he made in 2010, which is well beyond the 4-year statute of limitations.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects. The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)).

Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4. However, there are two recognized exceptions to the proposition that a chapter 7 debtor lacks standing to object to a creditor's proof of claim: (1) when disallowance of the claim would create a surplus case, with the excess amounts payable to the debtor; and (2) where the claim at issue would not be dischargeable. *In re Cherne*, 514 B.R. 616, 621 (Bankr. D. Idaho 2014) (citing *Wellman v. Ziino*, 378 B.R. 416 n.5 (B.A.P. 9th Cir. 2007); *In re Lona*, 393 B.R. at 4; *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953)). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

In this case, the Debtor has not even addressed the issue of standing, let alone carried his burden of proof to show that disallowance of the Claim would create a surplus case or that the Claim is otherwise nondischargeable. Additionally, from this Court's review of relevant pleadings, it is premature to determine whether there is a sufficient possibility of a surplus.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to January 15, 2020

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... Hakop Jack Aivazian

Chapter 7

at 10:00 a.m. The Debtor is directed to file a brief status report addressing the standing issue by no later than December 27, 2019.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#118.00 HearingRE: [112] Motion for order confirming chapter 11 plan Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization and to Accept Late Filed Ballots for Classes 2 and 3; Memorandum of Points and Authorities; Declarations of Sandra McBeth and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service

Docket 112

Tentative Ruling:

9/3/2019

For the reasons set forth below, confirmation of the First Amended Plan is DENIED.

Pleadings Filed and Reviewed

1. Order Approving Adequacy of Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Chapter 11 Plan of Reorganization [Doc. No. 76]
2. Debtor's First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Reorganization [Doc. No. 80] (the "First Amended Disclosure Statement")
3. Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 81] (the "First Amended Plan")
4. Ex Parte Motion to Continue Deadline for Debtor to Confirm a Chapter 11 Plan of Reorganization [Doc. No. 82]
5. Notice of Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 84]
6. Ballot for Accepting or Rejecting Plan [Doc. No. 85]
7. Proof of Service of: First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Reorganization; First Amended Chapter 11 Plan of Reorganization; Order Approving Adequacy of Debtor's First Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of First Amended Chapter 11 Plan of Reorganization; Ballot; Ballot Letter; Notice of Hearing on Confirmation of Debtor's First

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... United International Mortgage Solutions, Inc. Chapter 11

- Amended Chapter 11 Plan of Reorganization [Doc. No. 86]
8. Order Granting Ex Parte Motion to Continue Deadline for Debtor to Confirm a Chapter 11 Plan of Reorganization [Doc. No. 87]
 9. Ex Parte Motion to Continue: (1) Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization and Related Deadlines; (2) Deadline for Debtor to Confirm a Chapter 11 Plan of Reorganization [Doc. No. 95]
 10. Order Granting Ex Parte Motion to Continue: (1) Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization and Related Deadlines; (2) Deadline for Debtor to Confirm a Chapter 11 Plan of Reorganization [Doc. No. 97]
 11. Stipulation to Continue Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 100]
 12. Order Approving Stipulation to Continue Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 104]
 13. Proof of Service of Order Approving Stipulation to Continue Hearing on Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 107]
 14. Stipulation re Plan Treatment of Class 2 Claim Held by Errol Gordon (1258 N. Virgil Avenue, Los Angeles, CA 90029) [Doc. No. 108] (the "Class 2 Claim Stipulation")
 15. Stipulation re Plan Treatment of Class 3 Claim Held by Errol Gordon (6205 Senford Avenue, Los Angeles, CA 90056) [Doc. No. 110] (the "Class 3 Claim Stipulation")
 16. Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization and to Accept Late Filed Ballots for Classes 2 and 3; Memorandum of Points and Authorities; Declarations of Sandra McBeth and Roksana D. Moradi-Brovia in Support Thereof [Doc. No. 112] (the "Confirmation Brief")
 17. Opposition to Motion Entitled "Motion to Confirm Debtor's Second Amended Plan" [Doc. No. 116] (the "PVP Opposition")
 18. Amended Declaration of James A. Judge in Opposition to Confirmation of Chapter 11 Plan [Doc. No. 117] (the "Judge Declaration")
 19. Objection to Confirmation of Chapter 11 Plan [Doc. No. 118] (the "Nationstar Objection")
 20. Objection of Villa D'Este Maintenance Corporation to Chapter 11 Plan and

**United States Bankruptcy Court
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Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

CONT... United International Mortgage Solutions, Inc. Chapter 11

Opposition to Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization and to Accept Late Filed Ballots for Classes 2 and 3 [Doc. No. 119] (the "Villa Objection")

- a. Declaration of Alan I. Nahmias in Support of Objection of Villa D'Este Maintenance Corporation to Chapter 11 Plan [Doc. No. 120] (the "Nahmias Declaration")
 - b. Request for Judicial Notice in Support of Objection of Villa D'Este Maintenance Corporation to Chapter 11 Plan [Doc. No. 121] (the "Villa RJN")
21. Reply to Objections to Debtors' Motion to Confirm First Amended Chapter 11 Plan of Reorganization and to Accept Late Filed Ballots For Classes 2 and 3 [Doc. No. 122] (the "Omnibus Reply")

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed this voluntary Chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns three residential real properties:

- i. 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property");
 - ii. 5935 Playa Vista Dr., #414, Playa Vista, CA 90094 (the "Playa Vista Property");
- and
- iii. 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties").

The Debtor filed this case to address several defaulted loans secured by liens on the Properties and to reorganize its affairs. The Debtor now seeks confirmation of its First Amended Chapter 11 Plan of Reorganization [Doc. No. 81] (the "First Amended Plan"). [Note 1]

Summary of the First Amended Plan

Administrative Claims

Debtor's counsel, Resnik Hayes Moradi, has consented to Debtor's proposal to repay its estimated \$50,000 administrative claim, pending Court approval, by making monthly payments in the amount of \$1,000 until its claim is satisfied.

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 4, 2019

Hearing Room 1568

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CONT... United International Mortgage Solutions, Inc.

Chapter 11

On May 9, 2019, the Court entered an order authorizing the Debtor's employment of Aaron Joshua to serve as the Debtor's accountant [Doc. No. 90]. However, the Debtor's Confirmation Brief states that the only professional of the Debtor's estate is Debtor's Counsel.

Priority Tax Claims

The Debtor proposes to pay the Internal Revenue Services \$400 priority tax claim in full on the Effective Date.

The Debtor also proposes to pay the Franchise Tax Board's \$2,542 priority claim in full, with 5% interest, by making 36 monthly payments of \$77, beginning on the Effective Date.

Class 1 – Nationstar Mortgage LLC d/b/a Mr. Cooper ("Nationstar") [Note 2] – Voted to Reject the First Amended Plan

Nationstar holds the first-priority lien against the Virgil Property in the amount of \$882,107. The Debtor proposes to pay Nationstar's claim in full, with 5.5% interest amortized over 30 years. Nationstar will be repaid in two phases. The Debtor will make 120 monthly payments to Nationstar in the amount of \$5,009. The Debtor will also deposit \$982 a month into a tax impound account on account of this claim. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Nationstar's claim. The balloon payment will be calculated by subtracting from the principal amount all payments made following the Effective Date. The Debtor will raise the funds to make the balloon payment by either refinancing the Virgil Property or from contributions from its owners.

Nationstar's claim is impaired, and it voted to reject the Plan.

Class 2 – Secured Claim of Errol Gordon ("Gordon") – Deemed to Reject Subject to Debtor's Request to Accept Late-Filed Ballot

Gordon holds a second-priority lien against the Virgil Property in the amount of \$50,000.

Pursuant to the First Amended Plan, the Debtor proposed to pay Gordon's claim in full, with 4% interest amortized over 40 years as follows. Gordon would be repaid in two phases. The Debtor would make 120 monthly payments to Gordon in

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CONT... United International Mortgage Solutions, Inc. Chapter 11

the amount of \$209. The Debtor would then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he was entitled to vote on the First Amended Plan, but did not timely cast a ballot.

On August 14, 2019, the Debtor and Gordon entered into a stipulation regarding Gordon's Class 2 treatment [Doc. No. 108] (the "Class 2 Claim Stipulation"). **[Note 3]** Pursuant to that stipulation, the parties state that Gordon actually holds a \$100,000 second-priority lien against the Virgil Property, as well as a \$50,000 third-priority lien and a \$50,000 fourth-priority lien against the Virgil Property.

Also pursuant to the Class 2 Claim Stipulation, the parties agreed to the following modified treatment for Class 2:

- Gordon will hold a \$150,000 secured claim against the Virgil Property;
- Following confirmation, Gordon will record a reconveyance of his fourth-priority lien;
- Gordon's claim will be paid in full with 4% interest amortized over 40 years;
- Gordon will be repaid in two phases:
- First, the Debtor will make 60 monthly payments of \$627;
- Second, the Debtor will make a one-time 5-year balloon payment, in an amount to be calculated by deducting all principal payments made by the Debtor to Gordon following the Effective Date, plus any accrued but unpaid interest, fees, charges and attorneys' fees.

The Debtor submits that the proposed modifications constitute non-material modifications. The Debtor also asks the Court to accept Gordon's submission of a late ballot voting in favor of the First Amended Plan (as modified by the Class 2 Claim Stipulation) on behalf of this class pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the "FRBP"). The Debtor states that Gordon's failure to submit a timely ballot is the result of excusable neglect because Gordon does not believe he received the Debtor's Solicitation Package. The Debtor further submits that allowance of a late-filed Class 2 ballot will not result in any delay or prejudice to other creditors.

Class 3 – Secured Claim of Gordon – Deemed to Reject Subject to Debtor's Request

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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 4, 2019

Hearing Room 1568

11:00 AM

**CONT... United International Mortgage Solutions, Inc.
to Accept Late-Filed Ballot**

Chapter 11

Gordon also holds a second-priority lien against the Senford Property in the amount of \$300,701. Pursuant to the First Amended Plan, the Debtor proposed to pay Gordon's claim in full, with 4% interest amortized over 40 years. Gordon would be repaid in two phases. The Debtor would make 120 monthly payments to Gordon in the amount of \$1,257. The Debtor would then make a one-time ten-year balloon payment in an amount necessary to fully satisfy Gordon's claim. Gordon's claim is impaired and he was entitled to vote on the First Amended Plan, but did not timely cast a ballot.

On August 14, 2019, the Debtor and Gordon entered into a stipulation regarding Gordon's Class 3 treatment [Doc. No. 110] (the "Class 3 Claim Stipulation"). **[Note 4]** Pursuant to that stipulation, the parties state that Gordon actually holds a \$150,000 first-priority lien against the Senford Property and a \$35,000 second-priority lien against the Senford Property.

Also pursuant to the Class 3 Claim Stipulation, the parties agreed to the following modified treatment for Class 3:

- Gordon will hold a \$185,000 secured claim against the Senford Property;
- Gordon's claim will be paid in full with 4% interest amortized over 40 years;
- Gordon will be repaid in two phases:
- First, the Debtor will make 60 monthly payments of \$774;
- Second, the Debtor will make a one-time 5-year balloon payment, in an amount to be calculated by deducting all principal payments made by the Debtor to Gordon following the Effective Date, plus any accrued but unpaid interest, fees, charges and attorneys' fees.

The Debtor submits that the proposed modifications constitute non-material modifications. The Debtor also asks the Court to accept Gordon's submission of a late ballot voting in favor of the First Amended Plan (as modified by the Class 3 Claim Stipulation) on behalf of this class pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the "FRBP"). The Debtor states that Gordon's failure to submit a timely ballot is the result of excusable neglect because Gordon does not believe he received the Debtor's Solicitation Package. The Debtor further submits that allowance of a late-filed Class 3 ballot will not result in any delay or prejudice to other creditors.

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Class 4 – Secured Claim of Los Angeles County Treasurer and Tax Collector (the "LACTTC") – Deemed to Reject the First Amended Plan

LACTTC holds a property tax lien against the Senford Property in the amount of \$97,939. The Debtor proposes to pay LACTTC's claim in full, with 18% interest, plus redemption penalty interest and any other fees, costs, or charges LACTTC is entitled to. The Debtor will make 60 monthly payments to LACTTC in the amount of \$2,487.

LACTTC's claim is impaired, but it did not cast a ballot. Therefore, Class 4 is deemed to reject the First Amended Plan.

Class 5 – Secured Claim of Mr. Cooper/Nationstar ("Mr. Cooper") – Unimpaired and Not Entitled to Vote

Mr. Cooper holds the first-priority lien against the Playa Vista Property in the amount of \$857,177. The Debtor proposes to pay Mr. Cooper's claim in accordance with the applicable loan obligations. As such, Mr. Cooper's claim is unimpaired and Mr. Cooper was not entitled to vote on the Plan.

Class 6 – Secured Claim of Playa Vista Parks HOA ("PVP") – Voted to Reject the First Amended Plan

PVP holds an HOA lien against the Playa Vista Property in the amount of \$70,080. The Debtor proposes to pay PVP's claim in full, at 4% interest amortized over 40 years. PVP's claim will be repaid in two phases. The Debtor will make 120 monthly payments to PVP in the amount of \$323. The Debtor will then make a one-time ten-year balloon payment in an amount necessary to fully satisfy PVP's claim. The balloon payment will be calculated by subtracting from the principal amount all payments made following the Effective Date. The Debtor will raise the funds to make the balloon payment by either refinancing the Virgil Property or from contributions from its owners.

PVP's claim is impaired, and it voted to reject the First Amended Plan.

Class 7 – Secured Claim of Villa D'Este HOA ("Villa") – Deemed to Reject First Amended Plan

Villa holds an HOA lien against the Playa Vista Property in the amount of \$31,855. The Debtor proposes to pay Villa's claim in full, with 4% interest amortized

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over 40 years. The Debtor will make 120 monthly payments to Villa in the amount of \$323.

Villa's claim is impaired, but it did not cast a ballot. Therefore, Class 7 is deemed to reject the First Amended Plan.

Class 8 – Priority Unsecured Claims – N/A

The Debtor does not believe any priority unsecured claims exist.

Class 9 – General Unsecured Claims – Unimpaired and Not Entitled to Vote

The Debtor estimates that general unsecured claims total approximately \$723. These claims will be paid in full on the Effective Date. The Debtor submits that this proposed treatment renders general unsecured claims unimpaired and, accordingly, claimants in this class are deemed to accept the Plan and not entitled to vote.

Class 10 – Interest Holders

Debtor's owners will retain their ownership interest in the Debtor.

Opposition to the First Amended Plan

Nationstar, PVP and Villa oppose confirmation of the First Amended Plan. The opposition of each entity is summarized below:

Nationstar's Opposition

Nationstar (Class 1) asserts that the First Amended Plan cannot be confirmed for the following reasons:

1. The First Amended Plan is not proposed in good faith as required by § 1129(a)(3) because:
 - a. This Court has already determined that the filing of the petition was part of a scheme to hinder, delay, or defraud Nationstar from proceeding with its state-law rights pursuant to § 362(d)(4) in connection with its request for stay relief [Nationstar Objection, Ex. B];
 - b. This is the 13th bankruptcy filing affecting the Virgil Property;
 - c. The Debtor is not an obligor under the loan;
 - d. Although the Debtor is proposing to pay Nationstar's claim with 5.5% interest (which is already down from the note rate of 6.375% fixed), the way the language is

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drafted means that the Debtor will not actually end up paying any interest because the proposed balloon payment will be calculated by doing a straight deduction of all plan payments made during years 1 through 10 from the \$890,872.62 principal. *See* Confirmation Brief, 13:7-10 ("The balloon payment will be computed as follows: \$882,1007 less all Plan payments made by the Debtor to claimant from the Effective Date. The Debtor will raise funds to make the balloon payment by either refinancing the property or from contributions from its owners").

2. The First Amended Plan is not fair and equitable as required by § 1129(b)(2)(A) because:

a. Nationstar's claim is impaired and it voted to reject the plan and the Debtor is not paying Nationstar the present value of its claim because the plan language results in a 0% interest rate;

b. Even if the Debtor were paying 5.5% interest, the Debtor has not presented any evidence to show that this is an appropriate interest rate to compensate Nationstar for the risk of deferred cash payment;

c. The Debtor is not an obligor under this loan.

3. The First Amended Plan is not feasible as required by § 1129(a)(11) because:

a. The Debtor has not presented sufficient evidence to establish its ability to make the proposed 10-year balloon payment. There is no evidence in the record that the Virgil Property has any equity, let alone adequate equity to refinance the Virgil Property. Nor is there any evidence to show that the Debtor, on its own, will generate sufficient cash flow or that the Debtor's owners have the financial means to fund the proposed balloon payment.

4. The Debtor is not an obligor under the loan and is attempting to effectuate a third-party discharge for the original borrower, Sandra McBeth, in violation of § 524(e). The Debtor only obtained its asserted interest in the Virgil Property by way of an unauthorized grant deed [Nationstar Objection, Ex. C].

PVP's Opposition

PVP (Class 6) asserts that the First Amended Plan cannot be confirmed for the following reasons:

1. The First Amended Plan is not proposed in good faith as required by § 1129(a)(3) and violates several provisions of the Bankruptcy Code because:

a. The corporate resolution authorizing the Debtor to file this bankruptcy case is invalid because it was only signed by one of the Debtor's principals, Sandra McBeth ("Ms. McBeth") and, based on PVP's review of the schedules filed in Ms. McBeth's

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individual Chapter 13 bankruptcy case, there are reasons to question whether Ms. McBeth had any authority to sign the corporate resolution.

b. The Debtor was not the record owner of the Senford Property as of the Petition Date and appears to only own a 50% interest in that property, with the other 50% appearing to be owned by James K. Reynolds.

c. The Debtor did not own 100% of the Virgil Property as of the Petition Date. In the year prior to the Debtor's bankruptcy filing, there were a number of deeds of trust purporting to transfer fractional interests in the Virgil Property to various third parties.

d. The Debtor only owns 50% of the Playa Vista Property, with the other 50% appearing to be owned by Ms. McBeth's family trust.

e. The Class 2 and Class 3 claims of Mr. Gordon are undisclosed personal debts of Ms. McBeth and not corporate debts of the Debtor's. PVP also questions the validity of these debts and believes further investigation is required.

f. The Debtor's Confirmation Brief improperly seeks approval of a "Second Amended Plan," which contains different provisions with respect to Class 2 and Class 3 which are to the detriment of other secured creditors that voted against the First Amended Plan. Moreover, the Second Amended Plan has not been presented to creditors for review and the Court did not authorize the Debtor's solicitation of a Second Amended Plan.

g. The proposed changes set forth in the Class 2 and Class 3 Stipulations are not "immaterial" and are brought in bad faith as an attempt to dilute "no" votes and cram down a plan that otherwise fails. Pursuant to those stipulations, Mr. Gordon gets to keep his security interests and gets paid in half of the time as proposed in the First Amended Plan. In exchange for two late ballots, Mr. Gordon is now being treated more generously than other similarly situated secured creditors who timely voted to reject the plan.

h. The Debtor has failed to establish that Mr. Gordon's late-filed ballots should even be accepted. If Mr. Gordon did not, in fact, receive the Solicitation Package, then the Debtor's solicitation of Mr. Gordon's votes violated § 1125.

In support of its opposition, PVP attached the Declaration of James A. Judge (the "Judge Declaration") and twelve supporting exhibits.

Villa's Opposition

Villa (Class 7) asserts that the First Amended Plan cannot be confirmed for the following reasons:

1. The First Amended Plan is not feasible as required by § 1129(a)(11) because:

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- a. The Debtor's budget reflects negative net monthly income for months 2 – 5 and the Debtor has not provided sufficient evidence to show that it has the ability to make all plan payments during that time frame;
 - b. The plan is being funded, in part, from contributions from Ms. McBeth, but the Debtor has not submitted sufficient evidence to show that Ms. McBeth can feasibly make those contributions. This is especially necessary in light of the fact that Ms. McBeth filed her own individual Chapter 13 bankruptcy case on July 3, 2018, which was dismissed on September 24, 2018 at her Chapter 13 confirmation hearing. Additionally, the information in Ms. McBeth's individual schedules undermines the Debtor's evidence of Ms. McBeth's financial stability. Villa requests the Court take judicial notice of Ms. McBeth's Schedule I;
 - c. Villa believes that the Playa Property is currently vacant and not generating any income. Despite making several requests from the Debtor for a copy of new and old leases, the Debtor has failed to produce any evidence establishing that the Playa Property is being rented. *See* Nahmias Declaration, ¶¶ 3-7. Since the Debtor's plan relies on its ability to generate income from the Playa Property, the absence of evidence establishing whether it is being rented creates further questions concerning the feasibility of the First Amended Plan.
2. The First Amended Plan does not satisfy the best interest of creditors test set forth in § 1129(a)(7). Debtor's liquidation analysis is deficient because the Debtor states that if the case were converted a case under Chapter 7, Villa would not receive any payments because there are no repayment plans in a Chapter 7. This is inaccurate because if the case were converted to Chapter 7 Villa would be paid, in full, from the sale of the Playa Property, which would result in a more favorable treatment because then Villa would not have to wait ten-years to receive full repayment with a below-prime interest rate.
3. The First Amended Plan is not fair and equitable as required by § 1129(b)(2)(A) because:
- a. The plan does not unambiguously state that Villa will retain its lien;
 - b. The proposed interest rate of 4.4% is below prime and Debtor has failed to submit evidence establishing that this is an appropriate interest rate to compensate Villa for the risk of deferred cash payment;
4. The late-filed ballots of Errol Gordon should not be counted because Debtor's Confirmation Brief is not supported by sufficient evidence to establish the existence of any excusable neglect. However, in the event the Court is inclined to accept the late-filed Gordon ballots, Villa requests that the Court also accept its own late-filed

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ballot. [Note 5]

5. Based on the foregoing, Villa requests that the Court convert the case to a case under Chapter 7.

Debtor's Omnibus Reply

The Debtor makes the following arguments in Reply to the Oppositions filed by Nationstar, PVP and Villa:

Reply to Nationstar Opposition

1. Nationstar is correct that it appears that the Debtor is proposing to pay zero interest on its claim, but the Debtor submits that the relevant language contained a typographical error and should have instead read: "the balloon payment will be computed as follows: \$882,107 less all principal payments made by the Debtor to claimant from the Effective Date."
2. The Debtor also offers to advance the proposed balloon payment for Nationstar's claim from 10 years to only 5 years after the effective date, while keeping the amortization term at 30 years.
3. The Debtor denies any assertion that the First Amended Plan was proposed in bad faith. The Debtor highlights that Nationstar's rights have not been restrained because Nationstar has had nine months to foreclose on the Virgil Property if it believed the Debtor's reorganization efforts were not done in good faith. The Debtor acknowledges the prior bankruptcy filings but argues that this case has been handled competently and with full disclosure since its outset.
4. Nationstar's contention that the First Amended Plan will likely be followed by a future need for reorganization or liquidation is unsupported by any admissible evidence or legal authority. Conversely, the Debtor has submitted the Declaration of Sandra McBeth as evidence of the existence of equity in the Virgil Property. The Debtor also highlights that it was prepared to refinance the Virgil Property during the pendency of this case, and had a willing lender lined up, but elected to withdraw that motion to allow the Debtor instead to address Nationstar's claims through a plan of reorganization.
5. The Debtor is not seeking to discharge any debt obligations between Ms. McBeth and Nationstar. However, because the Debtor holds title to the Virgil Property, it was required under the Code to include Nationstar's claim in its plan of reorganization.

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1. In response to PVP's contention that Ms. McBeth's schedules undermine her financial ability to make plan funding contributions, the Debtor states that Ms. McBeth made an error in her schedules because she was representing herself. The Debtor states that these mistakes have not impacted this case and the Debtor has operated with full transparency.
2. The Debtor also refutes PVP's assertion that the corporate resolution is invalid and instead states that the resolution was 100% accurate and effective and is supported by ownership interests that have been provided to the California Secretary of State.
3. The Debtor acknowledges that there have been prior transfers of interests in the Properties, but counters that the transfers have been disclosed from the start of this case and that all interests have been transferred back to the Debtor. The Debtor contends that there is no prohibition to the Debtor clearing up title and bringing assets into the estate. The Debtor also contends that revocable family trusts are generally ignored in bankruptcy and title to assets is attributed to be held by the debtor.
4. With respect to Mr. Gordon's liens, the Debtor states that Mr. Gordon holds valid liens against the Virgil Property and, accordingly, the Debtor had an obligation to provide for the treatment of those claims in its plan.
5. In response to PVP's contention that the Debtor failed to adequately brief the issue of accepting Mr. Gordon's untimely ballots and whether the Class 2 and 3 Stipulations implement material modifications to the plan, the Debtor counters that the Confirmation Brief does address the *Ekstrom* case and provides an adequate basis to find the existence of excusable neglect. The Debtor also restates its position about why it does not believe the stipulations materially alter the plan.
6. The Debtor highlights that PVP has not objected to the Debtor's proposed treatment of its claim and highlights that if the First Amended Plan is not confirmed then PVP's claim will likely be extinguished in the event that Nationstar forecloses on the Playa Vista Property.

Reply to Villa Opposition

1. The Debtor counters Villa's contention that the plan is infeasible because there is negative net monthly income for months two through five by highlighting that the Debtor's budget clearly shows available cash to cover the shortfalls for those months.
2. The Debtor also counters Villa's contention that the plan is not adequately supported by evidence of Ms. McBeth's financial ability to make monthly plan contributions by highlighting that information in the First Amended Disclosure Statement contains sufficient details about Ms. McBeth's income as a real estate

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consultant operating through her DBA, Playa Vista Realty Group ("PVRG"). As further support, the Debtor attaches a supplemental declaration from Ms. McBeth in support of the Omnibus reply as well as recent bank statements reflecting monthly income of approximately \$42,000.

3. With respect to Villa's contentions that the Playa Vista Property is not generating rental income, the Debtor attaches a copy of the existing lease as Ex. B.

4. The Debtor also argues that its liquidation analysis is accurate with respect to Villa's claim because the Playa Vista Property is almost entirely encumbered by existing liens such that a chapter 7 trustee would not seek to administer the property.

5. The Debtor argues that given the alternatives to the treatment the Debtor has proposed, a 4.5% interest rate amortized over 10 years is far more than what Villa would receive in a chapter 7 case. However, the Debtor offers to increase the interest rate to 5.5% and reduce the balloon payment date from 10 years to 5 years.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court declines to determine whether it is appropriate to accept the Late-Filed ballots from Class 2 and Class 3 or whether the Class 2 and 3 Claim Stipulations material modify the First Amended Plan because even if the Court were to accept the ballots and find that the modifications are immaterial, the Court would nevertheless find that the First Amended Plan is fatally flawed. [Note 6]

For the reasons stated below, confirmation of the First Amended Plan is DENIED. [Note 7]

A. Villa's Request for Judicial Notice is Granted

The Court grants Villa's request for the Court to take judicial notice of Ms. McBeth's individual Schedule I, filed in *In re Sandra McBeth*, Case No. 2:18-bk-17700-SK, on the basis that the document is a matter of public record [Villa RJN, Ex. A]. However, the Court only takes judicial notice of the date of filing and existence of Schedule I, and not for the truth of the matters asserted therein.

B. The First Amended Plan is Not Feasible

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to

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find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

"The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Hawaii, Inc. v. Shakey's Inc. (Matter of Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985). To satisfy the feasibility requirement, the Debtor must present "evidence to demonstrate that the Plan has a reasonable probability of success." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1364 (9th Cir. 1986). "The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan of reorganization can be performed. However, where the financial realities do not accord with the proponent's projections or where the projections are unreasonable, the plan should not be confirmed.... 'The inquiry is on the viability of the reorganized debtor, and its ability to meet its future obligations, both as provided for in the plan and as may be incurred in operations.' 'In this respect, section 1129(a)(11) requires the plan proponent to show concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under the plan.'" *In re Sagewood Manor Assocs. Ltd. P'ship*, 223 B.R. 756, 762 (Bankr. D. Nev. 1998) (internal citations omitted). "Feasibility is the heart of every Chapter 11 reorganization case. It is the most important element of § 1129(a)." *In re Linda Vista Cinemas, L.L.C.*, 442 B.R. 724, 737 (Bankr. D. Ariz. 2010).

In *Linda Vista Cinemas*, the court explained how the feasibility standard applies to Plans that propose a balloon payment:

If a final payment, in the form of a "balloon" payment, is proposed to come from new financing to be acquired by the Debtor in the form of some new lending vehicle, then proof of feasibility is necessary. Whether that balloon payment can likely be made, and new financing acquired, requires credible evidence proving that obtaining that future financing is a reasonable likelihood. *See In re Inv. Co. of The Southwest, Inc.*, 341 B.R. 298, 311, 314, 316 (B.A.P. 10th Cir. 2006) (plan not feasible where there was no evidence to demonstrate how the debtor would be able to fund required balloon payments).

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A court may not confirm a plan if its feasibility depends on future refinancing, unless there is an adequate evidentiary showing that such refinancing is likely to occur. *See In re Made in Detroit, Inc.*, 299 B.R. 170, 179–80 (Bankr. E.D. Mich.2003) (plan not confirmed when proponent made inadequate showing of ability to obtain financing); *In re Vanderveer Estates Holding, LLC*, 293 B.R. 560 (Bankr. E.D.N.Y. 2003) (similar); *In re Walker*, 165 B.R. 994 (E.D. Va. 1994) (similar with respect to future sale of property).

Linda Vista Cinemas, L.L.C., 442 B.R. at 738.

The Debtor has failed to carry its burden of demonstrating that the plan is feasible. In support of the Debtor's ability to make the proposed balloon payments to creditors, the Debtor submitted various declarations from Ms. McBeth attesting to the alleged equity in the Properties and references a withdrawn Motion for Postpetition Financing as evidence of the Debtor's future ability to refinance the Properties. *See Omnibus Reply*, 7:11-18. The Court finds this evidence is woefully insufficient and does not support a finding that future financing is reasonably likely – either through a refinance of from owner contributions.

This problem is even further compounded by the concessions offered in the Debtor's Omnibus Reply to modify the proposed treatment for Classes 1 and 7 by advancing the balloon payment deadline from 10 years to only 5 years following the Effective Date. Furthermore, some of the affected liens on the Properties have been in default for a significant period of time and Ms. McBeth and related parties have been attempting to address the indebtedness for years. There is nothing in the record to indicate that the Debtor's prospects for refinancing is greater than any of its predecessors.

The Court recognizes that the Debtor's ability to make a future balloon payment can never be established with certainty. But in cases where courts have approved balloon-payment plans, the Debtor has provided evidence showing there is a reasonable probability that the balloon payment will be made. *See, e.g., SPCP Grp., LLC v. Cypress Creek Assisted Living Residence, Inc.*, 434 B.R. 650, 657 (M.D. Fla. 2010) (changes in debtor's management structure, as well as the fact that the debtor had increased its revenue during the Chapter 11 case, provided evidence of its ability

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to make a balloon payment); *Linda Vista Cinemas*, 442 B.R. at 732 (balloon payment was feasible because existing indebtedness would be reduced by half by the time the balloon payment became necessary). Here, no such evidence exists. Instead, all the Debtor provides in support of its ability to make the balloon payment is speculation and unwarranted optimism. The Debtor provides no "credible evidence proving that obtaining [the] future financing is a reasonable likelihood." *Linda Vista Cinemas*, 423 B.R. at 738.

Additionally, the Court finds that the Debtor has failed to satisfy its evidentiary burden to show that it will have sufficient monthly cash reserves to satisfy its proposed plan obligations. As set forth in the Financial Projections submitted as Exhibit B to the First Amended Disclosure Statement, the success of the plan depends, in part, upon Ms. McBeth's ability to make monthly plan contributions of \$6,000. To establish Ms. McBeth's financial condition, the Debtor submitted various declarations from Ms. McBeth describing her success as a real estate consultant operating under the dba Playa Vista Realty Group, Inc. ("PVRG") and PVRG bank statements. However, the PVRG bank statements are not particularly useful because they are heavily redacted and provide only a limited financial snapshot of PVRG's financial condition. Therefore, the Court again finds that the Debtor's evidence is inadequate.

Therefore, the Court finds that the First Amended Plan does not satisfy § 1129(a) (11).

C. The First Amended Plan is Not Fair and Equitable

Section 1129(a)(8) requires each class to accept the plan, unless the class is not impaired. To accept a plan, members of a class must affirmatively vote in favor of the plan. *In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989). Classes 1 and 6 voted to reject the plan. Classes 4 and 7 did not vote and are deemed to reject the plan. Therefore, even assuming the Court were to accept the late-filed Class 2 and Class 3 ballots (which it presently has not), to confirm the First Amended Plan, the Debtor would still be required to establish that, with respect to Classes 1, 4, 6 & 7, the First Amended Plan "does not discriminate unfairly, and is fair and equitable." 11 U.S.C. § 1129(b)(1).

Classes 1, 4, 6 & 7 consist of secured claims. To satisfy § 1129(b)(1)'s "fair and

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equitable" requirement, the First Amended Plan must provide that those classes (1) retain the liens securing their claims, and (2) receive deferred cash payments with a present value equal to the allowed amount of their claims. 11 U.S.C. § 1129(b)(2)(A)(i)(I). The Debtor, as plan proponent, has the burden of proof on all issues pertaining to plan confirmation, including establishing that each of the foregoing requirements are satisfied. The Debtor has not carried its burden of proof as to either.

First, the First Amended Plan does not state that Classes 1, 4, 6 & 7 will retain their respective liens securing their claims. Although the Debtor argues in the Omnibus Reply that this was its intent, the operative language in the plan does not clearly state that Classes 1, 4, 6 & 7 will retain their liens. Second, the Debtor has not submitted *any* evidence establishing that the proposed interest rates provide Classes 1, 6 & 7 with a stream of payments equal to the present value of their claims, aside from making the conclusory statements that the significant equity cushions in the Properties more than adequately accounts for any risks of default. Confirmation Brief, 39:26-28, 40:1, 41:24-26, 42:1-2, 43:11-15. [Note 8]

Therefore, the Court finds that the First Amended Plan cannot be crammed down on Classes 1, 4, 6 & 7.

D. The Plan is Not Proposed in Good Faith

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Court finds that the First Amended Plan has not been proposed in good faith. The Debtor has not established that the Properties dealt with by the First Amended Plan are, in fact, property of the estate or that it is obligated to pay the debts it proposes to pay pursuant to terms of the First Amended Plan. Although the Debtor argues that it has an obligation under the Bankruptcy Code to provide for treatment of

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any claims against the Properties, this premise is based on the unsupported assumption that the Debtor holds valid legal title to the Properties. The Debtor concedes that there have been a number of unauthorized transfers of interest affecting the Properties, which several interest holders have claimed were done in violation of their security agreements. Therefore, the Debtor appears to be asking this Court to validate the unauthorized transfers without following the proper procedures for obtaining quiet title.

For the same reason, the Court finds that the First Amended Plan appears to be a continuation of the Debtor's, Ms. McBeth's and other third parties' pattern of attempting at all costs to hinder and delay creditors. The Court incorporates its prior findings made in connection with Nationstar's request for stay relief, in which this Court found that:

The Debtor's bankruptcy filing was part of a scheme to delay, hinder or defraud creditors. Movants have presented evidence to show that as early as 2011, McBeth has been in default of her loan obligations with respect to the Virgil Property (SRJN Ex. 1) and that since that time, McBeth, the Debtor, and other individuals have filed no less than nine bankruptcy cases affecting the Virgil Property. [] The evidence also shows that there have been at least two transfers of all or part ownership of the Virgil Property without Movants' consent (SRJN, Ex. 2, 5). The Court also finds that under McBeth's apparent control, the Debtor has used this bankruptcy filing to further this scheme.

Next, the Court finds that the object of the scheme is to delay and hinder Movants' ability to foreclose on the Virgil Property and that McBeth and the Debtor have succeeded in forestalling the foreclosure process for over seven years.

Finally, for the reasons set forth above, the Court finds that the scheme satisfies both sections of sections 362(d)(4)(A) and (B) because the evidence shows that there have been two transfers without Movants' consent and nine bankruptcy filings affecting the Virgil Property.

The Court is not persuaded by the Debtor's contentions that McBeth's transfer of the Virgil Property was for a legitimate purpose or that this

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bankruptcy case was filed with the good faith intention of reorganizing. Instead, Movants' evidence reveals that McBeth transferred the Virgil Property without Movants' consent and on the eve of a trustee's sale and that since such transfer, McBeth and the Debtor have filed successive bankruptcy petitions to thwart Movants' foreclosure efforts.

[Doc. No. 48].

In view of the numerous fatal defects with the First Amended Plan, the absence of an impaired consenting classes, and the Debtor's half-hearted attempt to satisfy its evidentiary burden of proof, the Court finds that the First Amended Plan was not proposed in good faith.

III. Conclusion

For the reasons set forth above, confirmation of the First Amended Plan is DENIED.

After the hearing the Court will issue an order directing the Debtor to appear and show cause as to why this case should not be dismissed in view of the Debtor's failure to provide evidence establishing that it holds valid legal title to the Properties.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor's Confirmation Brief seeks confirmation of a Second Amended Plan, which the Court presumes the Debtor intends to mean the First Amended Plan, as modified by the Class 2 Stipulation and Class 3 Stipulation.

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CONT... United International Mortgage Solutions, Inc.

Chapter 11

Note 2: The First Amended Plan identifies the claimant in this class as Seterus, Inc. as Authorized Sub-Servicer for Federal National Mortgage Association, but Nationstar filed a timely opposition to the Confirmation Brief stating that it is the first-priority lienholder on the Virgil Property.

Note 3: The Debtor lodged an order for approval of the Class 2 Claim Stipulation, but for the reasons set forth herein, the Court need not determine whether to approve the stipulation because sufficient alternative grounds exist to deny confirmation.

Note 4: The Debtor lodged an order for approval of the Class 3 Claim Stipulation, but for the reasons set forth herein, the Court need not determine whether to approve the stipulation because sufficient alternative grounds exist to deny confirmation.

Note 5: Villa requests that the Court accept its late-filed ballot rejecting the Debtor's First Amended Plan. However, in the absence of an affirmative vote in favor of the plan, Villa's Class 7 claim is already deemed to have rejected the plan. Since there are no other creditors in Class 7, it would make no difference whether the Court accepts Villa's late-filed ballot or not.

Note 6: If the Court were to reach the issue on the present record, the Court would deny the Debtor's request to accept the late-filed ballots because the Debtor has not submitted a declaration from Mr. Gordon substantiating the Debtor's claims that Mr. Gordon did not receive the Solicitation Package and was unaware of the deadline to cast a ballot.

Note 7: The Court has not addressed all of the issues and arguments raised by the parties in their various briefing because, for the reasons set forth herein, there are several alternative grounds to deny confirmation.

Note 8: The Debtor offers to submit additional briefing on this issue in the event the Court determines that the Debtor's evidence is insufficient. This is illusory. The Debtor, as plan proponent, bears the burden of proof as to all confirmation issues. Accordingly, the Debtor should have anticipated the need to submit evidence establishing the appropriateness of its proposed interest rates as soon as it became aware that its plan needed to be crammed down on several impaired rejecting classes.

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CONT... United International Mortgage Solutions, Inc. Chapter 11

The Court has already granted the Debtor a number of continuances and will not permit any additional ones.

Party Information

Debtor(s):

United International Mortgage

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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2:19-13763 Ya-Chuan Victor Lee

Chapter 11

#119.00 HearingRE: [69] Motion For Sale of Property of the Estate under Section 363(b) - No Fee (with proof of service)

Docket 69

Tentative Ruling:

9/3/2019

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Juan and Maribel Morales
- 2) Property for sale: 1820 W. 146th St., Unit F, Gardena, CA, 90249
- 3) Purchase price: \$400,000.00
- 4) Overbids: The initial overbid shall be \$410,000.00. Subsequent overbids shall be in increments of \$5,000.00

Pleadings Filed and Reviewed:

- 1) Debtor's Motion to: (1) Approve Sale of Real Property Free and Clear of All Liens, Interests, Claims, and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approve Overbid Procedures; (3) Determine that Purchaser is a Purchaser in Good Faith Entitled to Protection Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Breakup Fee [Doc. No. 69] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 70]
 - b) Notice of Sale of Estate Property [Doc. No. 68]
- 2) Conditional Non-Opposition to Debtor's Motion for Order Approving Sale of Property Free and Clear of Liens [filed by JPMorgan Chase Bank, N.A.] [Doc. No. 74]
- 3) Non-Opposition Response to Debtors' Motion for Sale of Property of the Estate Under Section 363(b) [filed by the Bank of New York Mellon] [Doc. No. 76]

I. Facts and Summary of Pleadings

Ya-Chuan Victor Lee (the "Debtor") filed a voluntary Chapter 11 petition on April

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3, 2019. The Debtor owns property located at 1820 W. 146th St., Unit F, Gardena, CA 90249 (the "Property"). On May 2, 2019, the Court authorized the Debtor to employ Donald Arthur Bonseigneur, a real estate broker at Berkshire Hathaway Home Services, to market the Property. Doc. No. 27.

On July 2, 2019, the Court entered an order valuing the Property at \$355,000, and avoiding a junior lien asserted by Complete Business Solutions Group, aka Par Funding (the "CBSG Lien") as wholly unsecured. Doc. No. 59.

On May 14, 2019, the Court approved a stipulation between the Debtor and JPMorgan Chase Bank, N.A. ("Chase") authorizing the Debtor to use the cash collateral generated by the Property. The Property is currently occupied by a paying renter.

Debtor moves to sell the Property free and clear of liens, claims, and interests. The proposed purchasers are Juan and Maribel Morales (the "Buyers"). The sale is subject to overbids. The Debtor proposes to pay secured claims against the Property directly from escrow.

The Bank of New York Mellon, N.A., as Trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust Mortgage Pass-Through Certificates, Series 2005-7 (the "Bank of New York Mellon") holds a first deed of trust against the Property. The Bank of New York Mellon does not oppose the Sale Motion, provided that its claim is paid in full from escrow pursuant to an updated payoff demand.

Chase holds a second deed of trust against the Property. Chase does not oppose the Sale Motion, provided that its claim is paid in full from escrow pursuant to an updated payoff demand. Chase requests that the following language be included in the order approving the Sale Motion:

- 1) Subsequent to entry of an Order on Debtor's Motion, Chase, by and through its counsel of record, will provide an updated formal, written payoff demand to Debtor, Debtor's counsel and the designated escrow officer with respect to Chase's Claim;
- 2) Chase's claim is undisputed and shall be paid in full, directly from escrow from the proceeds of the sale as a second position secured Creditor in accordance with the terms and provisions of its payoff demand provided;
- 3) If Debtor disputes any amounts set forth in any payoff demand provided by Chase, that Debtor be required to identify what amounts are in dispute in writing at least 24 hours prior to any close of escrow. Further, that Debtor immediately release to Chase any and all funds not alleged to be disputed, and

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hold and reserve in escrow the amount disputed, along with the remaining excess sale proceeds over and above Chase's payoff demand (collectively, "Disputed Amount") pending the release of any such Disputed Amount pursuant to written stipulation between the parties submitted to escrow without further order of this Court, or pursuant to Order of this Court after notice and hearing. Further, Chase's lien shall immediately attach to the sale proceeds with the same force and effect, and in the same priority, validity and scope as its lien with respect to the Subject Property, and Chase's claim will continue to accrue interest at its per diem rate and fees and costs in any payoff demand provided until said claim is paid off in full;

- 4) Prior to any scheduled closing of escrow, counsel for Chase will be authorized to obtain a copy of the estimated HUD-1 Settlement/Closing Statement for review and approval;
- 5) Chase reserves the right to require an updated payoff demand prior to any close of any escrow to ensure its claim is paid in full; and
- 6) Chase always preserves the right to seek a motion for relief from the automatic stay in the event the sale is not consummated for any reason, or there is a breach of the Cash Collateral Stipulation.

Doc. No. 76 at 4–5.

II. Findings and Conclusions

Section 363(b) permits the debtor to sell estate property out of the ordinary course of business, subject to court approval. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Debtor has demonstrated sufficient business justification for the sale. The sale will generate approximately \$31,000.00 in net proceeds to the estate which can be distributed to creditors through a Plan of Reorganization

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;

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- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Pursuant to § 363(f)(3), the sale is free and clear of the liens of the Bank of New York Mellon, Chase, and the Los Angeles County Tax Collector, because the sales price of the Property exceeds the aggregate value of the liens, and the Debtor intends to pay the liens in full directly from the sales proceeds. The sale is free and clear of the CBSG lien, which has been avoided and no longer attaches to the Property. Doc. No. 59.

The Debtor is authorized to pay from the sales proceeds (1) normal closing costs, (2) a real estate broker's commission in the amount of 6% of the sales price, and (3) amounts due to the Bank of New York Mellon, Chase, and the Los Angeles County Tax Collector on account of their liens against the Property.

The Court declines to approve the 3% breakup fee requested by the Debtors. "[A] 'break-up fee' is an incentive payment to an unsuccessful bidder who placed the estate property in a sales configuration mode ... to attract other bidders to the auction. Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets. The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding they are not enforceable." *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (internal citations and quotations omitted).

Break-up fees are typically approved for sales of large businesses in which potential purchasers must conduct time-consuming and expensive due diligence. Here, the asset being sold is residential property that purchasers can evaluate without expending significant sums on due diligence. The Court finds that a break-up fee is not necessary to incentivize bidding. The break-up fee is detrimental to the estate because it will reduce the recovery to creditors in the event that an overbidder prevails at the auction.

Having reviewed the declaration of the Buyers, the Court finds that the Buyers are good-faith purchasers entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

The Debtor is authorized to execute any and all documents that may be necessary to consummate the sale. The Debtor is authorized to retain the net sale proceeds in the

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Chapter 11

Debtor's' debtor-in-possession bank account for the benefit of the estate.

The language requested by Chase is appropriate and should be included in the Sale Order.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid shall be \$410,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Party Information

Debtor(s):

Ya-Chuan Victor Lee

Represented By
Marcus G Tiggs

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2:18-10408 Christina Marie Uzeta

Chapter 7

#120.00 HearingRE: [37] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Trustees Motion For Approval Of: (i) Sale Agreement Of The Liquor License Pursuant To 11 U.S.C. § 363, (ii) Overbidding Process, And (iii) Finding Of Good Faith Under 11 U.S.C. § 363(M); Memorandum Of Points And Authorities; Declaration Of Rosendo Gonzalez In Support Thereof Date: September 4, 2019 Time: 11:00 A.M. Place: Courtroom 1560" (Gonzalez (TR), Rosendo)

Docket 37

Tentative Ruling:

9/3/2019

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Huaqing Yuan and Haidilao Catering (U.S.A.), Inc.
- 2) Property for sale: Type 47 Liquor License #552801—transfer pending #590598
- 3) Purchase price: \$90,000.00
- 4) Overbids: The initial overbid shall be \$95,000.00. Subsequent overbids shall be in increments of \$5,000.00.

Pleadings Filed and Reviewed:

- 1) Trustee's Motion for Approval of: (i) Sale Agreement of the Liquor License Pursuant to 11 U.S.C. § 363, (ii) Overbidding Process, and (iii) Finding of Good Faith Under 11 U.S.C. § 363(m) [Doc. No. 37] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 38]
 - b) Notice of Sale of Estate Property [Doc. No. 39]
- 2) No opposition to the Sale Motion is on file

I. Facts and Summary of Pleadings

Christina Marie Uzeta (the "Debtor") filed a voluntary Chapter 7 petition on January 12, 2018. The Debtor received a discharge on June 4, 2018, and the Debtor's case was closed on July 5, 2018. On May 3, 2019, the case was reopened upon the motion of the United States Trustee, to provide the Chapter 7 Trustee (the "Trustee")

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CONT... **Christina Marie Uzeta**

Chapter 7

the opportunity to administer an undisclosed asset, a Type 47 Liquor License (the "Liquor License").

The Trustee moves to sell the Liquor License to Huaqing Yuan and Haidilao Catering (U.S.A.), Inc. (the "Buyers") for \$90,000.00. The sale is subject to overbids. No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets. The bidding procedures proposed by the Trustee are approved.

The Trustee requests that the Buyers be afforded the protections of § 363(m). The Trustee's declaration filed in support of the Sale Motion does not contain any evidence that the Buyers are entitled to such protections. At the hearing, the Court will take testimony from the Buyers to determine whether they are entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid shall be \$95,000.00 with subsequent overbids to be increments of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

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Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing re [2962] Emergency Motion For Entry of An Order (A) Authorizing The Debtors To Use Cash Collateral And (B) Granting Adequate Protection To Prepetition Secured Creditors

Docket 0

Tentative Ruling:

9/05/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash Collateral and (B) Granting Adequate Protection to Prepetition Secured Creditors [Doc. No. 2962; refiled as Doc. No. 2968 solely to correct the CM/ECF docket event code] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 2963]
 - b) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 2965]
 - c) Debtors' Notice of Shortened Hearing Re [Motion] [Doc. No. 2979]
 - i) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Debtors' Notice of Shortened Hearing Re [Motion] [Doc. No. 2988]
- 2) Official Committee of Unsecured Creditors' Response to the [Motion] [Doc. No. 3000]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. The Debtors seek authorization to use cash collateral, provide adequate protection to prepetition secured parties, and pay off

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existing debtor-in-possession financing.

Chapter 11

A. Background

On October 4, 2018, the Court entered a *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 409] (the “Final DIP Order”). The Final DIP Order authorized the Debtors to borrow up to \$185 million (the “DIP Financing”) from Ally Bank (the “DIP Lender”) under a credit agreement (the “DIP Credit Agreement”), and authorized the Debtors to use the cash collateral of the Prepetition Secured Creditors. [Note 1] Under the DIP Credit Agreement, the DIP Financing expires and matures in accordance with its terms on September 7, 2019 (the “Maturity Date”).

On December 27, 2018, the Court entered an order approving the sale (the “SCC Sale”) of substantially all assets of O’Connor Hospital (“O’Connor”) and Saint Louise Regional Hospital (“St. Louise”) to the County of Santa Clara (“SCC”). Doc. No. 1153 (the “SCC Sale Order”). The SCC Sale closed on February 28, 2019. The proceeds of the SCC Sale (the “SCC Sale Proceeds”) were placed into “sales proceeds” deposit accounts in the name of the relevant selling Debtor at Bank of America, each denominated by the Debtors as an “Escrow Deposit Account” within the meaning of paragraph M of the Final DIP Order. Pursuant to the Final DIP Order, the Escrow Deposit Accounts are subject to the senior and priming liens of the DIP Lender, and are subject to deposit account control agreements in favor of the DIP Lender. *See* Final DIP Order at ¶ M.

The Debtors have undertaken a wind down of the operations of Debtor Verity Medical Foundation (“VMF”). In connection with this wind down, the Debtors have disposed of and/or transferred certain physician practices through sales and/or settlements with the owners of such practices (the proceeds of sales of VMF assets, the “VMF Sales Proceeds”). *See* Doc. Nos. 1338, 1367, 1368, 1915, 1919, and 2429. The VMF Sales Proceeds have been deposited in the Escrow Deposit Accounts. The Escrow Deposit Accounts hold approximately \$187 million, consisting of the SCC Sale Proceeds, the VMF Sale Proceeds, and the proceeds of the sales of various other assets.

On May 2, 2019, the Court entered an order approving the sale (the “SGM Sale”) of substantially all assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center (including Seton Coastside) to

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Strategic Global Management, Inc. (“SGM”). Doc. No. 2306 (the “SGM Sale Order”). The Debtors have submitted the SGM Sale to review by the California Attorney General under applicable non-bankruptcy law.

Under the DIP Budget, the Debtors expect to have a borrowing balance of \$86 million on the September 7, 2019 Maturity Date. If the SGM Sale closes by the end of October 2019, the Debtors expect to need access to an additional \$50 million in cash. **[Note 2]** The continued operations of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Seton Medical Center, and Seton Coastside (collectively, the “Remaining Hospitals”) generate losses of approximately \$450,000 per day.

The Debtors obtained an offer of continued debtor-in-possession financing through an extension of the DIP Credit Agreement until the earlier of the closing of the SGM Sale or December 31, 2019. The DIP Lender proposed to charge a 60-basis points extension fee. The estimated incremental cost of the extension is \$3 million if financing is extended through October and \$5 million if financing is extended through December 31, 2019.

As an alternative to the extension of the DIP Credit Agreement, the Debtors received a cash collateral proposal from UMB Bank and Wells Fargo. Under that proposal, the Debtors would use the cash collateral held in the Escrow Deposit Accounts to fully defease the obligations under the DIP Credit Agreement, including payoff of the outstanding borrowing balance as of the Maturity Date. Cash collateral would also be used to sustain the operations of the Remaining Hospitals while the Debtors attempt to close the SCC Sale.

The Debtors, the Prepetition Secured Creditors, and the Official Committee of Unsecured Creditors (the “Committee”) prefer the less costly cash collateral proposal offered by UMB Bank and Wells Fargo over an extension of the DIP Credit Agreement.

B. Summary of Papers Filed in Connection with the Motion

The Debtors seek authorization to use cash collateral pursuant to the terms of a proposed Supplemental Cash Collateral Order and Cash Collateral Budget (collectively, the “Cash Collateral Agreement”). The Prepetition Secured Creditors have consented to the Debtors’ use of cash collateral. Under the Cash Collateral Budget, the Debtors will pay off the outstanding amounts owed to the DIP Lender and then use cash collateral to fund operational expenses until the earlier of (1) December 31, 2019, (2) the effective date of a plan of liquidation, (3) the date of any stay,

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revocation, reversal, amendment or other modification of the Final DIP Order or the Supplemental Cash Collateral Order, (4) the occurrence of an Event of Default, or (5) the date the Court dismisses or converts the cases or orders the appointment of a Trustee or examiner. An "Event of Default" includes, without limitation, the termination of the Asset Purchase Agreement between certain of the Debtors and SGM.

The Debtors propose four forms of adequate protection for the Prepetition Secured Creditors: (1) adequate protection payments; (2) replacement liens; (3) preservation of the Debtors' equity cushion through continuous maintenance of real property; and (4) superpriority expenses of administration for any proven diminution in value. Adequate protection payments will be equivalent to the postpetition, non-default interest on the outstanding balances of the MTI Obligations and MOB Financing (as defined in the Final DIP Order).

The Committee supports the Debtors' proposed use of cash collateral pursuant to the Supplemental Cash Collateral Order, but requests that the following provisions be included in the order:

- 1) The order should make clear that the Committee's right to challenge the validity of the Prepetition Liens, pursuant to ¶ 5(e) of the Final DIP Order, remains in effect.
- 2) The Supplemental Cash Collateral Order states that the Prepetition Secured Creditors have liens on substantially all of the Debtors' assets. By way of pending adversary proceedings, the Committee has challenged the extent to which certain liens asserted by the Prepetition Secured Creditors have been properly perfected. The Supplemental Cash Collateral Order should not adversely affect the adversary proceedings being prosecuted by the Committee.
- 3) The Committee has appealed to the Ninth Circuit provisions in the Final DIP Order granting waivers under §§ 506(c) and 552(b). The Supplemental Cash Collateral Order, which reiterates those waivers, should not affect the Committee's prosecution of the appeal or this Court's ability to revisit the issue as appropriate.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the

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secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. §§ 363(c)(2)(B) and (e).

The Prepetition Secured Creditors have consented to the use of cash collateral. The Cash Collateral Agreement negotiated with the Prepetition Secured Creditors is supported by the Committee. The proposed use of cash collateral is approved. The Court finds that the Cash Collateral Agreement is superior to an extension of the DIP Credit Agreement because it will result in substantial savings for the estates.

The Court finds that the Prepetition Secured Creditors are adequately protected. In addition to adequate protection payments, the Prepetition Secured Creditors will receive replacement liens and a superpriority administrative expense claim for any proven diminution in value. The use of cash collateral to maintain the operations of the Remaining Hospitals constitutes further adequate protection. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]").

The Court finds that the Debtors would suffer irreparable harm absent approval of the use of cash collateral. The DIP Credit Agreement matures on September 7, 2019. Without the use of cash collateral, the Debtors would be unable to operate the Remaining Hospitals while they attempt to close the SGM Sale. Use of cash collateral is also necessary to enable the Debtors to pay off the DIP Loan and avoid a default as to the Scheduled Termination Date of the DIP Credit Agreement.

The Court agrees with the Committee that the Supplemental Cash Collateral Order should explicitly provide that nothing contained therein (1) prejudices the Committee's ability to challenge the validity of the Prepetition Liens pursuant to ¶ 5(e) of the Final DIP Order, (2) prejudices the Committee's ability to prosecute the appeal of the Final DIP Order, or (3) prejudices the Committee's ability to challenge, by way of pending adversary proceedings, the extent to which certain liens asserted by the Prepetition Secured Creditors have been properly perfected. The Debtors and the Committee shall negotiate appropriate language to this effect.

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A final hearing on the Motion shall take place on **September 30, 2019, at 10:00 a.m.** Any opposition to final approval of the Cash Collateral Agreement shall be submitted by no later than **September 16, 2019**; replies in support of final approval, if any, shall be submitted by no later than **September 23, 2019**.

Based upon the foregoing, the Motion is GRANTED in its entirety.

Note 1

The term “Prepetition Secured Creditors” is defined in the Final DIP Order and means:

- 1) UMB Bank, N.A., as successor Master Trustee under the Master Trust Indenture dated as of December 1, 2001;
- 2) Wells Fargo Bank, N.A., as bond indenture trustee under the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005 A, G and H;
- 3) U.S. Bank, N.A., as note trustee under the California Public Finance Authority Revenue Notes (Verity Health System) Series 2015 A, B, C, and D and California Public Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B;
- 4) Verity MOB Financing, LLC; and
- 5) Verity MOB Financing II, LLC.

Note 2

The Debtors’ cash needs do not factor in the possibility that the Debtors could receive additional supplemental payments—such as a payment of Hospital Quality Assurance Funds—since the timing of any such payment is not predictable.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, September 6, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Steven J Kahn

Nicholas A Koffroth

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 9, 2019

Hearing Room 1568

10:00 AM

2:19-16078 David Christopher Brady

Chapter 11

#1.00 Hearing

RE: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2017 Maserati Levante Vin # ZN661XUS4HX224952) with Proof of Service. (Barasch, Adam)

Docket 34

*** VACATED *** REASON: PER ORDER ENTERED 9-9-19

Tentative Ruling:

9/4/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and the Debtor has not responded with any evidence to satisfy his burden under 11 U.S.C. § 362(g)(2).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 9, 2019

Hearing Room 1568

10:00 AM

CONT... David Christopher Brady

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

David Christopher Brady

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01418 Elissa D. Miller, solely in her capacity as chapte v. JH Plumbing

#1.00 Status Hearing to Monitor Consummation of Settlement
RE: [1] Adversary case 2:18-ap-01418. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JH Plumbing Corporation, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr: 3-19-19; 5-14-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JH Plumbing Corporation, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#2.00 Status Conference On Consummation Of Settlement Agreement
RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO,
Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11
U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held
By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of
money/property - 547 preference)),(14 (Recovery of money/property - other))
(Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 7-31-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Represented By
Ronald Clifford
Clayton W Davidson

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong
Lindsey L Smith

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18; 5-15-18; 8-14-18; 10-16-18; 1-23-19; 5-14-19

Docket 1

Tentative Ruling:

9/9/2019

Plaintiff has obtained final judgment in the State Court (the “State Court Judgment”) against Defendant, awarding Plaintiff damages of \$225,000 for sexual battery (Cal. Civ. Code § 1798.5), gender violence (Cal. Civ. Code § 52.4), and violation of the Ralph Civil Rights Act (Cal. Civ. Code § 57.7). The portion of the State Court Judgment awarding Plaintiff attorneys’ fees in the amount of approximately \$2.5 million remains subject to an appeal and is not yet final. However, the State Court Judgment’s award of costs in the amount of \$84,090.34 is final.

On February 4, 2019, the Court found that the portion of the State Court Judgment awarding damages and costs was non-dischargeable pursuant to § 523(a)(6). Doc. Nos. 42 and 45–46. The Court stated that adjudication of the dischargeability of the fee portion of the State Court Judgment would occur once that aspect of the judgment became final.

On March 19, 2019, Defendant filed a Chapter 13 petition, Case No. 2:19-bk-12964-NB. (The Chapter 7 case in which this litigation arose was closed on August 22, 2017.) On June 5, 2019, Judge Bason granted Plaintiff’s motion for relief from the automatic stay, to enable Plaintiff to continue litigating the appeal of the fee portion of the State Court Judgment. Doc. No. 46, Case No. 2:19-bk-12964-NB. The appeal of the fee portion of the State Court Judgment remains pending.

A continued Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which shall discuss the status of Defendant’s appeal of the fee portion of the State Court Judgment, shall be submitted by no later than fourteen days prior to the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT...

John Martin Kennedy

Chapter 7

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01276 LeClair v. United States Of America (Treasury Department, Int

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01276. Complaint by Jeremy Wyatt LeClair against United States Of America (Treasury Department, Internal Revenue Service Division) . (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)). Adversary transferred-in from Western District of North Carolina (Charlotte) and Adversary Proceeding #: 18-03043 to Central District of California (Los Angeles). (Ly, Lynn) Additional attachment(s) added on 8/30/2018 (Ly, Lynn). Additional attachment(s) added on 8/30/2018 (Ly, Lynn).

fr: 12-11-18; 5-14-19

Docket 1

Tentative Ruling:

9/9/2019

The Court has stayed this adversary proceeding—which seeks a determination as to the dischargeability of tax claims pursuant to § 523(a)(14)—until completion of the adjudication of an objection to discharge brought by creditor Alvaro Cortes (the "727 Action"). Doc. No. 22, Adv. No. 2:18-ap-01276-ER. The Court has found that this action will be rendered moot if Cortes prevails in the 727 Action. Trial in the 727 Action is set for the week of January 27, 2010. Doc. No. 41, Adv. No. 2:18-ap-01425-ER.

A continued Status Conference shall be held on **March 10, 2020, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Jeremy Wyatt LeClair Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

United States Of America (Treasury

Pro Se

Plaintiff(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

- #5.00** Status Hearing
RE: [1] Adversary case 2:19-ap-01085. Complaint by MERCHANTS ACQUISITION GROUP LLC against Paul Carrasco. false pretenses, false representation, actual fraud)) (Snyder, Richard)
fr. 6-11-19

Docket 1

***** VACATED *** REASON: CONT'D TO 10-15-19 at 10:00 A.M.**

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on May 2, 2019. Doc. No. 15. Having reviewed Plaintiff's Unilateral Status Report, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **July 11, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Paul A. Carrasco

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul Carrasco

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:19-10095 Jorge Villalobos Aguirre

Chapter 7

Adv#: 2:19-01099 SECURITY FIRST BANK v. AGUIRRE

#6.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01099. Complaint by SECURITY FIRST BANK against JORGE VILLALOBOS AGUIRRE. false pretenses, false representation, actual fraud)) (Dunning, Donald)

fr. 6-11-19

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT GRANTED AT 8-7
-19 HEARING**

Tentative Ruling:

6/10/2019

The Clerk of the Court entered Defendant's default on May 2, 2019. Doc. No. 15. Having reviewed Plaintiff's Unilateral Status Report, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **July 11, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Jorge Villalobos Aguirre

Chapter 7

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jorge Villalobos Aguirre

Represented By
Giovanni Orantes

Defendant(s):

JORGE VILLALOBOS AGUIRRE

Pro Se

Plaintiff(s):

SECURITY FIRST BANK

Represented By
Donald T Dunning

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:13-20738 Sergio Miranda

Chapter 11

Adv#: 2:19-01079 Miranda et al v. BANK OF AMERICA NATIONAL ASSOCIATION et al

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01079. Complaint by Sergio Lopez Miranda against BANK OF AMERICA NATIONAL ASSOCIATION. (Charge To Estate). (Attachments: # 1 Supplement Summons) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Akintimoye, David)

fr. 6-11-19; 7-10-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 8-30-19**

Tentative Ruling:

7/9/2019

In view of this Court's tentative rulings set forth in Calendar Nos. 6 -7, incorporated in full by reference, all litigation dates and deadlines previously ordered by the Court are VACATED. A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted no later than fourteen days prior to the hearing. If this action is resolved on the papers prior to September 10, 2019, the continued Status Conference will be taken off calendar.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sergio Miranda

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Sergio Miranda

David A Akintimoye

Chapter 11

Defendant(s):

BANK OF AMERICA NATIONAL Pro Se

Shellpoint Mortgage Servicing LLC Pro Se

DOES 1-10, Inclusive Pro Se

Joint Debtor(s):

Esmeralda Miranda Represented By
David A Akintimoye

Plaintiff(s):

Sergio Lopez Miranda Represented By
David A Akintimoye

Esmeralda Miranda Represented By
David A Akintimoye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#8.00 Status Conference

RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18; 9-11-18; 12-11-18; 1-15-19; 2-20-19; 4-3-19

Docket 1

***** VACATED *** REASON: DISMISSED 8-30-19**

Tentative Ruling:

4/2/2019

In connection with prior Status Conferences, the Court has stated that it would dismiss this action once all the conditions set forth in the *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") had been satisfied. Plaintiff Bradley D. Sharp, Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 for Liberty Asset Management Corporation (the "Plan Administrator"), states that all such conditions have been satisfied. The Plan Administrator states that he is in the process of preparing a stipulation and order for final dismissal.

By no later than **April 17, 2019**, the Plan Administrator shall submit a stipulation between the Plan Administrator and Crystal Waterfalls, LLC ("Crystal"), providing for the dismissal of this action, accompanied by a proposed order thereon. Crystal shall cooperate with the Plan Administrator to ensure that the stipulation is submitted promptly.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Crystal Waterfalls LLC

Chapter 11

at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#9.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18; 11-13-18; 1-15-19; 4-16-19; 6-11-19

Docket 0

***** VACATED *** REASON: DISMISSED 7-2-19**

Tentative Ruling:

6/10/2019

Plaintiffs have reached an agreement with Liberty Asset Management Corporation and Oak River Asset Management and no longer seek to pursue their claims against any of the remaining defendants. Plaintiffs have filed a motion to dismiss the action as to all remaining defendants.

A continued Status Conference shall be held on **September 10, 2019, at 10:00 a.m.** Plaintiffs shall file a Status Report by no later than fourteen days prior to the hearing. In the event the action has been dismissed as to all defendants, the continued Status Conference will go off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

HANDING HOLDING	Pro Se
TLH REO MANAGEMENT LLC	Pro Se
BRADBURY FURLONG LLC	Pro Se
OAK RIVER ASSET	Pro Se
LIBERTY ASSET MANAGEMENT	Represented By Jeffrey S Kwong David B Golubchik John-Patrick M Fritz Eve H Karasik
PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

RICHBEST HOLDING LLC	Pro Se
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
YCJS 2012 LLC	Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

David S Henshaw

AHA 2012 LLC

Represented By
David S Henshaw

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#10.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#11.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18; 11-13-18; 1-15-19; 4-16-19; 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 7/24/19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#12.00 Status Hearing to Monitor Consummation of the Settlements
RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-12-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#13.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-12-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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Tuesday, September 10, 2019

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#14.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18; 11-13-18; 1-15-19; 4-16-19; 6-11-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-11-19**

Tentative Ruling:

6/10/2019

The Court set litigation deadlines in connection with the previous Status Conference. The parties represent that they are in the process of documenting a settlement of this action. Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply.
- 2) A continued Status Conference to monitor consummation of the settlement shall be held on **September 10, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#15.00 Status Hearing to Monitor Consummation of the Settlement
RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18; 1-15-19; 7-16-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-24-19**

Tentative Ruling:

4/15/2019

This action having settled, the Court HEREBY ORDERS as follows:

- 1) Plaintiff shall file a motion to approve the settlement (the "Rule 9019 Motion") by no later than **May 31, 2019**. The Rule 9019 Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference to monitor consummation of the settlement is set for **July 16, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11
determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#16.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01165. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association. priority or extent of lien or other interest in property),(91 (Declaratory judgment)) (Shinderman, Mark)

Docket 1

***** VACATED *** REASON: Cont'd to 10/15/2019 at 10:00 am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Mark Shinderman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#17.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01166. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association. priority or extent of lien or other interest in property),(91 (Declaratory judgment)) (Shinderman, Mark)

Docket 1

***** VACATED *** REASON: Cont'd to 10/15/2019 @ 10:00am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#100.00 Pre-Trial Conference RE: [16] Amended Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (RE: related document(s)1 Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.) filed by Plaintiff Manuel Ramirez). (Lomeli, Lydia R.)

Docket 16

Tentative Ruling:

9/9/2019 (amended prior to hearing)

For the reasons set forth below, this hearing is VACATED.

On February 21, 2019, the Court issued a *Scheduling Order* [Doc. No. 26] (the "Scheduling Order") which, among other things, set a Pretrial Conference for September 10, 2019, and required the parties to submit a Joint Pretrial Stipulation by no later than fourteen days prior to the Pretrial Conference. After the parties failed to timely submit the Joint Pretrial Stipulation, the Court issued an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Pretrial and Trial Procedures* [Doc. No. 31] (the "Order to Comply"). The Order to Comply warned the parties of the consequences of failing to fulfill their litigation obligations:

The parties are further advised that that the Court views the Pretrial Conference as an indispensable component of the resolution of this litigation and strictly enforces compliance with the Local Bankruptcy Rules. A material default by the Plaintiff in complying with obligations regarding the preparation of the Joint Pretrial Stipulation will most likely result in dismissal of the action for failure to prosecute. *See Moneymaker v. CoBEN (In re Eisen)*, 31 F.3d 1447, 1451 (9th Cir. 1994) (dismissing action for failure to prosecute). A material default by the Defendant in fulfilling Defendant's corresponding obligations will most likely result in striking of the answer, entry of a default, and entry of judgment in favor of the Plaintiff. *See Hester v. Vision Airlines*,

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Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

CONT...

GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Inc., 687 F.3d 1162, 1169 (9th Cir. 2012) (setting forth the factors the Court must consider before striking a pleading and declaring default).

Order to Comply at 2.

Notwithstanding the issuance of the Order to Comply, the parties have failed to submit a Joint Pretrial Stipulation.

By separate order, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41(b). The hearing on the Order to Show Cause shall take place on **October 8, 2019, at 10:00 a.m.** Plaintiff shall file a written response to the Order to Show Cause by no later than **September 24, 2019**. Defendant's response to the Order to Show Cause, if any, shall also be submitted by no later than **September 24, 2019**.

The Court will prepare and enter the Order to Show Cause.

Since no Pre-trial stipulation is on file for the purposes of this hearing, this hearing is VACATED.

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#101.00 Pre-Trial Conference
RE: [21] Amended Complaint 2nd Amended by Michael N Berke on behalf of
Joseph Amin against Kami Emein

fr: 7-16-19

Docket 0

***** VACATED *** REASON: Cont'd to 1/14/2020 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Jacques Tushinsky Fox

Defendant(s):

Kami Emein

Represented By
TJ Fox

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Represented By
Uzzi O Raanan ESQ
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lin, Zi)

Docket 1

***** VACATED *** REASON: CONTINUED 3-10-20 AT 11:00 A.M. PER AMENDED COMPLAINT**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

Jenny Melendez, an individual	Pro Se
Clara E Melendez, an individual	Pro Se
DOES 1-20	Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee	Represented By Adjoa Anim-Appiah Zi Chao Lin
------------------------------------	--

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

CONT... Jenny Melendez

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:19-13751 Pius M. Wawire

Chapter 7

#103.00 Hearing
RE: [20] Motion to Dismiss Case for Abuse and Notice of Motion (BNC)
Pursuant to 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to
Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's
Discharge; Memorandum of Points and Authorities and Declaration of Wendy
Carole Sadovnick in Support Thereof . (Mar, Alvin)

Docket 20

*** VACATED *** REASON: Ntc of w/d filed on 9/5/2019

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pius M. Wawire

Represented By
Eliza Ghanooni

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

*** VACATED *** REASON: DISMISSED 4-30-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, September 10, 2019

Hearing Room 1568

11:00 AM

2:19-16549 Lynn M. Vargas

Chapter 11

#105.00 Hearing
RE: [30] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon)

Docket 30

***** VACATED *** REASON: CONTINUED 10-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lynn M. Vargas

Represented By
Rosendo Gonzalez
Hatty K Yip

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 11, 2019

Hearing Room 1568

10:00 AM

2:12-46632 Andrew Stephan Hutchings

Chapter 7

Adv#: 2:12-02723 BOND CORP REALTY SERVICES, INC. v. Hutchings

#1.00 Show Cause Hearing re [118] Order To Show Cause Why An Order For Sale Of A Dwelling Should Not Be Made, And Determination Of Homestead Exemption

Docket 0

Tentative Ruling:

9/10/2019

For the reasons set forth below, the Court will order the Property to be sold at auction.

Pleadings Filed and Reviewed:

- 1) Order to Show Cause Why an Order for Sale of a Dwelling Should Not be Made, and Determination of Homestead Exemption [Doc. No. 118] (the "Order to Show Cause")
 - a) Proof of Service Re [Order to Show Cause] [Doc. No. 121]
 - b) Proof of Service Re Posting at Subject Dwelling [Re Order to Show Cause] [Doc. No. 122]
- 2) Opposition and Response to [Order to Show Cause] [Doc. No. 123] (the "Opposition")
- 3) Plaintiff's Reply to Defendant's Late Filed Opposition to OSC Re: Sale of Real Property [Doc. No. 124] (the "Reply")

I. Facts and Summary of Pleadings

Bondcorp Realty Services, Inc. (the "Plaintiff") commenced this dischargeability action against Andrew Stephan Hutchings (the "Defendant") on December 27, 2012. On December 1, 2015, the Court entered judgment in favor of Plaintiff in the amount of \$302,000. Doc. No. 99 (the "Judgment").

On August 6, 2019, upon Plaintiff's application, the Court issued an *Order to Show Cause Why an Order for Sale of a Dwelling Should Not be Made, and Determination of Homestead Exemption* [Doc. No. 118] (the "Order to Show Cause"). The Court ordered Defendant to show cause why real property located at 5703 East

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Andrew Stephan Hutchings

Chapter 7

Belen Street, Long Beach, CA 90815 (the "Property") should not be sold at a U.S. Marshall's auction in order to satisfy the Judgment.

Summary of Defendant's Opposition and Plaintiff's Reply

Defendant filed an untimely Opposition to the Order to Show Cause. Defendant makes the following arguments in support of the Opposition:

- 1) An execution sale would be pointless because there is no equity in the Property. According to an appraisal dated August 9, 2019, the Property is worth \$645,000. Liens against the Property total \$702,508.
- 2) Plaintiff has received over \$100,000 from two other State Court defendants who were involved in the transaction that gave rise to the Judgment. Plaintiff's failure to disclose the receipt of such funds raises serious credibility issues. Before allowing the sale of the Property, the Court should require Plaintiff to disclose the total amount it has collected from other State Court defendants involved in the transaction.
- 3) Service of the Order to Show Cause was improper. The Order to Show Cause was not personally served upon all the tenants occupying the Property. Posting of the Order to Show Cause at the Property was not sufficient to apprise the tenants of their rights. In addition, the Order to Show Cause was not served upon the lienholders.

Plaintiff makes the following arguments in Reply to the Opposition:

- 1) The appraisal submitted in support of Defendant's claim that the Property has no equity is inadmissible because it is not authenticated by the appraiser. Further, the alleged lack of equity in the Property is irrelevant. A judgment creditor who forecloses on real estate takes title subject to pre-existing liens. Plaintiff is willing to take the risk that there may be no equity in the Property. In addition, although lack of equity is not relevant, one of the liens against the Property is avoidable because it was granted to an insider for no consideration. Upon obtaining title to the Property, Plaintiff intends to initiate legal action in the State Court to ascertain all parties' rights in the Property, unless the Bankruptcy Court is the proper venue for such action.
- 2) Plaintiff was not required to serve the Order to Show Cause upon the lienholders. Cal. Civ. Proc. Code § 704.770 does not require service upon

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lienholders. The lienholders will be properly notified of the upcoming sale at the proper time pursuant to Cal. Civ. Proc. Code § 701.540(h).

II. Findings and Conclusions

For the reasons set forth below, the Court will issue an order providing that the Property shall be sold at auction to satisfy the Judgment.

Under Cal. Civ. Proc. Code § 704.740, a judgment creditor may enforce a money judgment by applying to the Court for an order requiring the judgment debtor to show cause why the dwelling should not be sold. Here, as noted above, the Court issued the Order to Show Cause upon Plaintiff's application.

Cal. Civ. Proc. Code § 704.770(b) requires the Plaintiff to serve the Order to Show Cause as follows:

Not later than 30 days before the time set for hearing, the judgment creditor shall do both of the following:

- (1) Serve on the judgment debtor a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed by the Judicial Council. Service shall be made personally or by mail.
- (2) Personally serve a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

Plaintiff served the Order to Show Cause in accordance with the requirements of Cal. Civ. Proc. Code § 704.770(b). Pursuant to Cal. Civ. Proc. Code § 704.770(b)(1), Plaintiff timely served the Order to Show Cause upon Defendant by mail. Doc. No. 121. Pursuant to Cal. Civ. Proc. Code § 704.770(b)(2), Plaintiff timely served the Order to Show Cause upon the occupants of the Property by posting. Contrary to Defendant's contention, Plaintiff was not required to personally serve the Order to Show Cause upon the occupants residing at the Property. Cal. Civ. Proc. Code § 704.770(b)(2) authorizes service by posting if the occupants are not present. The declaration filed in support of the Proof of Service of the Order to Show Cause states that the process server attempted personal service, but served the Order to Show Cause by posting because no occupants were present. Under these circumstances, service by posting meets the requirements of the statute.

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Defendant's contention that service was defective because the lienholders were not served is likewise without merit. Nothing within Cal. Civ. Proc. Code § 704.770(b) requires service of the Order to Show Cause upon lienholders. Lienholders are only required to receive notice of the sale. *See* Cal. Civ. Proc. Code § 701.540(h) (requiring the levying office to provide lienholders at least 20 days' notice of the sale).

There is no merit to Defendant's contention that a sale should not be ordered because the liens against the Property exceed the anticipated sales price. **[Note 1]** Under Cal. Civ. Proc. Code § 704.800, a homestead may not be sold unless the bid amount exceeds the homestead exemption plus all liens against the homestead. However, the more stringent minimum bid requirements set forth in Cal. Civ. Proc. Code § 704.800 apply only to a homestead. For real property that is not a homestead, the less stringent minimum bid requirements set forth in Cal. Civ. Proc. Code § 701.620(a) apply. *See* Hon. Alan M. Ahart, *Cal. Pract. Guide: Enforcing Judgments & Debts* (The Rutter Group 2019) at Ch. 6D-7 (stating that "minimum bid requirements are substantially greater if a real property dwelling subject to the homestead exemption is put up for sale," but explaining that if the real property being sold is not a homestead, the minimum bid requirement is governed by Cal. Civ. Proc. Code § 701.620(a)). Under § 701.620(a), the minimum bid need not exceed the liens against the Property. Section 701.620 requires only that the minimum bid exceed the total of (1) all preferred labor claims that are required by § 1206 to be satisfied from the proceeds, (2) the amount of any state tax lien superior to the judgment creditor's lien, and (3) the amount of any deposit made pursuant to § 720.260, including interest, if the purchaser is not the judgment creditor.

Here, the minimum bid amount is governed by § 701.620(a), not § 704.800, because the Property is not a homestead. A homestead is "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." Cal. Civ. Proc. Code § 701.710. The Order to Show Cause required Defendant to submit written evidence establishing that he qualified for a homestead exemption with respect to the Property. In his Opposition to the Order to Show Cause, Defendant has not asserted that the Property is a homestead or that he is entitled to a homestead exemption. Defendant has not submitted any evidence showing that he or his spouse lives at the Property. To the contrary, Defendant's declaration in support of his Opposition shows that the

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Property is not a homestead. That declaration states that the Property "is a rental property ..." Decl. of Andrew Hutchings [Doc. No. 123] at ¶ 9.

There is no evidence before the Court indicating that the sale will not generate the minimum bid amount under Cal. Civ. Proc. Code § 701.620(a). Defendant's opposition based upon an alleged lack of equity in the Property is overruled.

Defendant next argues that Plaintiff should be required to disclose the total amount collected from unspecified third-party State Court defendants before proceeding with the sale. The Court declines to order such disclosure. Judgment in this action was entered solely against the Defendant. Amounts that the Plaintiff has collected against unrelated third-party defendants in an unrelated action before the State Court have no relevance whatsoever to this action.

Plaintiff states that once it obtains title to the Property, Plaintiff intends to commence an action to invalidate an alleged insider lien. Plaintiff states that it intends to commence such action before the State Court absent guidance to the contrary from this Court. The Court agrees with Plaintiff that the State Court is the proper forum for such an action. The Court would not have jurisdiction over Plaintiff's contemplated action to invalidate the alleged insider lien.

The Bankruptcy Court has jurisdiction over "all cases under title 11." 28 U.S.C. § 1334(a). "Generally, in the bankruptcy context, the word 'case' is a term of art which refers to 'that which is commenced by the filing of a petition; it is the "whole ball of wax," the chapter 7, 9, 11, 12 or 13 case.'" *Blevins Elec., Inc. v. First Am. Nat'l Bank (In re Blevins Elec., Inc.)*, 185 B.R. 250, 253 (Bankr. E.D. Tenn. 1995).

The Bankruptcy Court also has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The three types of jurisdiction conferred under 28 U.S.C. §1334(b) are known as "arising under," "arising in," and "related to" jurisdiction. "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). "Arising in" jurisdiction applies to "those administrative proceedings that, while not based on any right created by title 11, nevertheless have no existence outside bankruptcy." *Id.* "Related to" jurisdiction exists if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.... An action is related to bankruptcy if the action could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (internal citations omitted).

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The Court would not have jurisdiction over the contemplated action under 28 U.S.C. § 1334(a). The Debtor's bankruptcy case was closed on April 26, 2013. Having been closed, the case no longer qualifies as a "case under title 11" within the meaning of 28 U.S.C. § 1334(a).

The Court would not have any of the three types of jurisdiction specified in 28 U.S.C. § 1334(b) over the contemplated action. There would be no "arising under" jurisdiction, as the contemplated action is not created by title 11. There would be no "arising in" jurisdiction, because the contemplated action is not an administrative proceeding that has no existence outside bankruptcy. There would be no "related to" jurisdiction. The contemplated action could have no effect upon the estate, because the Debtor's case was closed long ago.

The only other plausible jurisdictional basis over the contemplated action would be ancillary jurisdiction. "Ancillary jurisdiction may rest on one of two bases: (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to vindicate its authority and effectuate its decrees." *Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.)*, 439 F.3d 545, 549 (9th Cir. 2006). Neither of these bases apply to the contemplated action. Nothing about the contemplated action raises claims which are factually interdependent with the dischargeability claims that the Court has already adjudicated. Nor is adjudication of the contemplated action necessary to enable the Court to vindicate the effectiveness of the Judgment. The effectiveness of the Judgment has not been called into question; the contemplated action is merely a means by which Plaintiff may collect upon the Judgment.

III. Conclusion

Based upon the foregoing, the Court will order the Property to be sold at auction. Plaintiff shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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Note 1

Plaintiff objects to the valuation evidence that Defendant submits in support of his contention that the Property lacks equity. Plaintiff is correct that the appraisal submitted by Defendant is not admissible because it has not been authenticated by the appraiser. However, Defendant has also testified as to the Property's value. As the owner of the Property, Defendant is qualified to testify as to its value. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Party Information

Debtor(s):

Andrew Stephan Hutchings

Represented By
James H Harmon

Defendant(s):

Andrew Stephan Hutchings

Represented By
David Brian Lally

Joint Debtor(s):

Gina Autore Hutchings

Represented By
James H Harmon

Plaintiff(s):

BONDCORP REALTY SERVICES,

Represented By
Jennifer W Gatewood
Anthony G Chavos
Rob R Nichols

Trustee(s):

Peter J Mastan (TR)

Pro Se

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Adv#: 2:19-01143 United States Trustee for the Central District of v. Lee

#2.00 HearingRE: [15] Motion for Default Judgment Against Debtor/Defendant to Deny Discharge; Proof of Service (Law, Dare)

Docket 15

Tentative Ruling:

9/10/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Complaint Objecting to Discharge Pursuant to 11 U.S.C. §§ 727(a)(3), 727(a)(5) and 727(a)(6) [Adv. Doc. No. 1] (the "Complaint")
- 2) Plaintiff's Motion for Default Judgment Under LBR 7055-1 (the "Motion for Default Judgment") [Doc. No. 15]
- 3) No opposition is on file

I. Facts and Summary of Pleadings

Sang Hoon Lee (the "Debtor") filed a voluntary Chapter 7 petition on December 20, 2018 (the "Petition Date"). On May 16, 2019, the United States Trustee (the "UST") commenced this action (the "Complaint") objecting to the Debtor's discharge pursuant to §§ 727(a)(3), (a)(5), and (a)(6)(A). The Complaint alleges that the Debtor (1) failed to keep records relating to over \$300,000 in loans and the disposition of the loan proceeds, (2) failed to satisfactorily explain the disposition of the approximately \$300,000 in loan proceeds, and (3) failed to obey a Court order to attend a Rule 2004 examination and to produce documents. After the Debtor failed to respond to the Complaint, the Clerk of the Court entered default on June 25, 2019. Doc. No. 11. The UST seeks entry of default judgment against the Debtor.

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261,

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1267 (9th Cir.1992). Based upon the Complaint's allegations, as well as the evidence submitted in support of the Motion for Default Judgment, the Court makes the following findings:

A. The Debtor is Not Entitled to a Discharge Pursuant to § 727(a)(3)

Section 727(a)(3) provides that a debtor is not entitled to a discharge if the debtor has:

concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case.

Here, the Debtor has failed to maintain and preserve adequate records to document the dissipation of over \$307,139 in loan proceeds that were borrowed from eleven banks and credit unions. Debtor testified that the proceeds were used for gambling, living expenses, and the repayment of loans from friends. Debtor failed to produce any books and records accounting for the sums repaid to friends or identifying the names of the friends who were repaid. In fact, Debtor has failed to produce any books and records describing in any manner the dissipation of the loan proceeds.

The UST is entitled to judgment on his claim for denial of discharge pursuant to § 727(a)(3).

B. The Debtor is Not Entitled to a Discharge Pursuant to § 727(a)(5)

Section 727(a)(5) provides that a debtor is not entitled to a discharge if the "debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities."

In a four month period in 2018, the Debtor obtained \$307,139 in loan proceeds from eleven banks and credit unions. The Debtor has failed to provide any details regarding the dissipation of the loan proceeds, aside from a cursory statement that a small amount was used for gambling and living expenses, with the balance being used to repay personal loans from friends. Debtor has failed to provide the names of the friends who were repaid, has failed to provide any details of the circumstances giving rise to the loans from friends (such as when the funds were borrowed or how much

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was borrowed), and has failed to provide any information regarding the circumstances and methods of repayment.

The Debtor has failed to satisfactorily explain the dissipation of \$307,139 in loan proceeds. The UST is entitled to judgment on his claim for denial of discharge pursuant to § 727(a)(5).

C. The Debtor is Not Entitled to a Discharge Pursuant to § 727(a)(6)(A)

Section 727(a)(6)(A) provides that a debtor is not entitled to a discharge if the debtor "has refused, in the case, to obey any lawful order of the court, other than an order to respond to a material question or to testify."

On March 28, 2019, the Court ordered the Debtor to appear at a Rule 2004 examination, to take place on April 24, 2019, and to produce documents in connection with the Rule 2004 examination. Bankr. Doc. No. 24 (the "Rule 2004 Order"). The Debtor failed to appear at the Rule 2004 examination and failed to comply with the document production requirements set forth in the Rule 2004 Order.

A debtor's complete disregard of an order requiring the debtor to appear at a Rule 2004 examination is grounds for denial of discharge, even though such an order includes a requirement to testify. *Sicherman v. Rivera (In re Rivera)*, 338 B.R. 318, 329 (Bankr. N.D. Ohio 2006), *aff'd*, 356 B.R. 786 (B.A.P. 6th Cir. 2007); *see also Grochocinski v. Eckert (In re Eckert)*, 375 B.R. 474, 481 (Bankr. N.D. Ill. 2007), *aff'd sub nom. Eckert v. Grochocinski*, No. 07-C-6012, 2008 WL 4547224 (N.D. Ill. Apr. 2, 2008) (holding that the debtor's failure to produce documents pursuant to a Rule 2004 examination order constituted grounds for denial of discharge).

Here, the Debtor completely disregarded the Rule 2004 Order. The UST is entitled to judgment on his claim for denial of discharge pursuant to § 727(a)(6)(A).

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, the UST shall submit (1) a proposed order incorporating this tentative ruling by reference and (2) a proposed judgment. (For purposes of the separate document rule, set forth in Civil Rule 58(a), both an order and a judgment must be submitted.)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sang Hoon Lee

Represented By
Michael H Yi

Defendant(s):

Sang Hoon Lee

Pro Se

Plaintiff(s):

United States Trustee for the Central

Represented By
Dare Law

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-24737 Sang Hoon Lee

Chapter 7

Adv#: 2:19-01143 United States Trustee for the Central District of v. Lee

#3.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01143. Complaint by United States Trustee for the Central District of California, Region 16 against Sang Hoon Lee. (Fee Not Required). Nature of Suit: (65 (Dischargeability - other)) (Law, Dare)

fr: 8-13-19

Docket 1

Tentative Ruling:

9/10/2019

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Sang Hoon Lee

Represented By
Michael H Yi

Defendant(s):

Sang Hoon Lee

Pro Se

Plaintiff(s):

United States Trustee for the Central

Represented By
Dare Law

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

#4.00 HearingRE: [26] Motion for Default Judgment Plaintiff's Motion for Default Judgment under LBR 7055-1 with Proof of Service

Docket 26

Tentative Ruling:

9/10/2019

For the reasons set forth below, the Motion is GRANTED, but only as to Estrada.

Pleadings Filed and Reviewed:

- 1) Complaint to Avoid Voidable Transactions and for Turnover [Doc. No. 1] (the "Complaint")
- 2) Plaintiff's Motion for Default Judgment Under LBR 7055-1 (the "Motion") [Doc. No. 26]
 - a) Memorandum of Points and Authorities in Support of Motion for Default Judgment Against Janet Estrada and Steven Molina [Doc. No. 23]
- 3) Notice of Opposition and Request for a Hearing [Doc. No. 28]

I. Facts and Summary of Pleadings

Manuel Macias (the "Debtor") filed a voluntary Chapter 7 petition on January 19, 2018 (the "Petition Date"). On May 1, 2019, the Chapter 7 Trustee (the "Trustee") commenced this action (the "Complaint") against Janet Estrada ("Estrada") and Steven Molina ("Molina," and together with Estrada, the "Defendants") to avoid and recover the pre-petition transfers of property located at 11468 Esther Street, Norwalk, CA 90650 (the "Norwalk Property"). The Trustee seeks (1) avoidance of the transfers pursuant to §§ 544(b), 548(a)(1)(A), and 548(a)(1)(B); (2) recovery of the avoided transfers pursuant to § 550; and (3) turnover of the Norwalk Property. After Defendants failed to respond to the Complaint, the Clerk of the Court entered their defaults on June 19, 2019. Doc. Nos. 13–14. The Trustee seeks entry of default judgment against the Defendants.

On September 9, 2019, Molina filed an untimely opposition to the Motion for

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Default Judgment. Molina states that he did not become aware of the Complaint until August 21, 2019, when he received a copy of the Motion for Default Judgment. Molina states that he does not live at the Norwalk Property, which is the address upon which the Summons and Complaint were served. Molina requests that the Motion for Default Judgment be denied and that he be allowed to defend against the litigation.

II. Findings and Conclusions

A. The Court Will Defer Ruling Upon the Motion for Default Judgment as to Molina

Entry of a defendant's default cuts off the defendant's right to appear in the action or present evidence. *Horton v. Sierra Conservation Ctr.*, No. 1:09-CV-01441-AWI-SMS, 2010 WL 743849, at *1 (E.D. Cal. Mar. 1, 2010) *report and recommendation adopted*, No. 1:09-CV-01441AWISMS, 2010 WL 1267743 (E.D. Cal. Mar. 31, 2010); *Great Am. Ins. Co. v. M.J. Menefee Const., Inc.*, No. F06-0392 AWIDLB, 2006 WL 2522408, at *2 (E.D. Cal. Aug. 29, 2006); *see also* Hon. A. Wallace Tashima and James M. Wagstaffe, *California Practice Guide: Federal Civil Procedure Before Trial* at 6:43 (if Defendant files an answer after default, the court should not accept the answer for filing; if the clerk accepts the answer, the court will order it stricken). The only procedure available to a defaulted defendant is to file a motion to set aside the default under Civil Rule 55(c).

As to Molina, the Court will defer ruling upon the Motion for Default Judgment to provide Molina an opportunity to file a motion to set aside his default (the "Motion"). Molina shall file the Motion by no later than **October 2, 2019**. Molina is strongly advised to retain counsel.

B. The Motion for Default Judgment is Granted as to Estrada

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). Based upon the Complaint's allegations, as well as the evidence submitted in support of the Motion for Default Judgment, the Court makes the following findings (the findings are made only as to Estrada):

1. Prepetition Transfers of the Norwalk Property

As of July 7, 2011, the Debtor held fee title to the Norwalk Property. By a grant deed recorded in Los Angeles County on May 23, 2012, the Debtor transferred the Norwalk Property to himself and Janet Estrada (the "2012 Transfer"). The grant deed

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described the 2012 Transfer as a bona fide gift for which the grantor received nothing in return.

By a grant deed recorded in Los Angeles County on November 24, 2015, the Debtor and Estrada transferred the Norwalk Property to the Debtor, Estrada, and Steven Molina (the "2015 Transfer"). The grant deed described the 2015 Transfer as a bona fide gift for which the grantor received nothing in return.

By a grant deed recorded in Los Angeles County on October 3, 2016, the Debtor, Molina, and Estrada transferred the Norwalk Property to Molina and Estrada (the "2016 Transfer," and together with the 2012 Transfer and the 2015 Transfer, the "Transfers"). The grant deed described the 2016 Transfer as a bona fide gift for which the grantor received nothing in return.

2. The Transfers are Avoidable as Actually Fraudulent Pursuant to § 544(b), Applying Cal. Civ. Code § 3439.04

The Trustee's claim under § 544(b), applying Cal. Civ. Code § 3439.04, is timely. The 2012 Transfer occurred on May 23, 2012. The Complaint was filed on May 1, 2019. The seven year limitations period imposed by Cal. Civ. Code § 3439.09(c) is tolled by § 546(a). *See Rund v. Bank of Am. Corp. (In re EPD Inv. Co., LLC)*, 523 B.R. 680, 692 (B.A.P. 9th Cir. 2015) ("Accordingly, we hold that so long as a state-law fraudulent transfer claim exists on the petition date (or the date the order for relief is entered), *i.e.*, the state's applicable repose period governing the action has not yet expired on the petition date (or the order for relief date), the trustee may bring the avoidance action under § 544(b), provided it is filed within the limitations period in § 546(a). The 'reach back' period is established on the petition date (or the order for relief date) and encompasses all transfers within the relevant period provided by state law."). Therefore, the Trustee had until January 19, 2020 (two years after the Petition Date) to file the Complaint.

Section 544(b)(1) permits the Trustee to "avoid any transfer of an interest of the debtor in property ... that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." The "applicable law" in this case is Cal. Civ. Code § 3439.04(a)(1), California's implementation of the Uniform Voidable Transactions Act (the "UVTA"), which provides:

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the

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obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor....
- (b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:
 - (1) Whether the transfer or obligation was to an insider.
 - (2) Whether the debtor retained possession or control of the property transferred after the transfer.
 - (3) Whether the transfer or obligation was disclosed or concealed.
 - (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
 - (5) Whether the transfer was of substantially all the debtor's assets.
 - (6) Whether the debtor absconded.
 - (7) Whether the debtor removed or concealed assets.
 - (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
 - (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
 - (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.
 - (11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

The Transfers were actually fraudulent pursuant to § 544, applying Cal. Civ. Code § 3439.04(a)(1). Multiple badges of fraud apply. The 2016 Transfer was to an insider, because the grant deed for the 2016 Transfer is described as an "interfamily transfer." The 2016 Transfer was concealed because it was required to be disclosed in the Debtor's Statement of Financial Affairs but was not. In addition, the Debtor concealed the 2015 Transfer and the 2016 Transfer by testifying that he had transferred nothing worth more than \$5,000 in the past four years. The value given to the Debtor in exchange for the Transfers was not reasonably equivalent to the value of the Norwalk Property because the grant deeds for the 2012 Transfer, 2015 Transfer, and 2016 Transfer describe the Transfers as gifts.

3. The Transfers are Avoidable as Actually Fraudulent Pursuant to § 548(a)(1)(A)

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Section 548(a)(1)(A) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer ... with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made ... indebted."

Because "it is often impracticable, on direct evidence, to demonstrate an actual intent to hinder, delay or defraud creditors," courts "frequently infer fraudulent intent from the circumstances surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 805 (9th Cir. 1994). Those badges of fraud include, but are not limited to, "(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer." *Id.*

For the same reasons that the Transfers are avoidable as actually fraudulent pursuant to § 544, applying Cal. Civ. Code § 3439.04(a)(1), the Transfers are avoidable as actually fraudulent pursuant to § 548(a)(1)(A).

4. The Transfers are Avoidable as Constructively Fraudulent Pursuant to § 548(a)(1)(B)

Section 548(a)(1)(B) permits the Trustee to avoid a transfer if the Debtor "received less than a reasonably equivalent value in exchange for such transfer" and if the Debtor "was insolvent on the date that such transfer was made ... or became insolvent as a result of such transfer."

The Debtor received no consideration for the Transfers and became insolvent as a result of the Transfers. Accordingly, the Transfers are avoidable as constructively fraudulent pursuant to § 548(a)(1)(B).

5. The Transfers are Avoidable as Constructively Fraudulent Pursuant to § 544, Applying Cal. Civ. Code § 3439.05(a)(1)

Section 544(b)(1) permits the Trustee to "avoid any transfer of an interest of the debtor in property ... that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." The "applicable law" in this case is

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Cal. Civ. Code § 3439.05(a)(1), which is substantially similar to § 548(a)(1)(B). Cal. Civ. Code § 3439.05(a)(1) provides that a transfer is voidable "if the debtor made the transfer ... without receiving a reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer"

As discussed, the Debtor received no consideration for the Transfers and became insolvent as a result of the Transfers. The Transfers are avoidable as constructively fraudulent pursuant to § 544, applying Cal. Civ. Code § 3439.05(a)(1)

6. The Trustee is Entitled to Recover the Norwalk Property Pursuant to § 550(a)

Where a transfer has been avoided under §§ 544 or 548, § 550(a) authorizes the Trustee to "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property"

Having avoided the Transfers of the Norwalk Property under §§ 544 and 548, the Trustee is entitled to recover the Norwalk Property for the benefit of the estate.

7. The Court Declines to Order Turnover of the Property

Section 542 requires any entity in possession of property of the estate to turnover such property to the Trustee.

Both Molina and Estrada claim an interest in the Norwalk Property. Because the Court is granting the Motion only as to Estrada, any turnover order would not be possible to enforce. The Court declines to order turnover at this time.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED, but only as to Estrada. Because the Court is not granting the Motion as to Molina, the Court will not enter final judgment at this time. Within seven days of the hearing, the Trustee shall submit an order (but not a judgment) granting the Motion as to Estrada.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

Manuel Macias

Represented By

Jennifer Ann Aragon - SUSPENDED -

Defendant(s):

Janet Estrada

Pro Se

Steven Molina

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

Michael G D'Alba

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Eric P Israel

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#100.00 APPLICANT: HEIDE KURTZ, Trustee

Hearing re [214] and [215] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/10/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$47,491.38 approved, but payment shall be limited to \$40,417.55 per Trustee's request [*see* Doc. No. 214]

Total Expenses: \$124.24

U.S. Trustee Fee: \$650.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay
Timothy J Yoo

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Chapter 7

#101.00 APPLICANT: LEVENE NEALE BENDER YOO & BRILL, Attorney

Hearing re [214] and [215] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/10/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$28,609

Expenses: \$658.52

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By

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#102.00 APPLICANT: HAHN FIFE & COMPANY, LLP, Accountant

Hearing re [214] and [215] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/10/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,680

Expenses: \$264.60

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By

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#103.00 APPLICANT: ONYINYE ANYAMA, Attorney for D-I-P (Chapter 11)

Hearing re [214] and [215] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/10/2019

The Court previously approved fees and expenses filed by this applicant [Doc. No. 190]. The Court approves applicant's fees and expenses on a final basis in the amounts set forth below.

Fees: \$1,478.26

Expenses: \$1,021.74

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By

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Carmela Pagay
Timothy J Yoo

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#104.00 FEES, UNITED STATES TRUSTEE

Hearing re [214] and [215] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/10/2019

See Cal. No. 100, incorporated in full by reference.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay
Timothy J Yoo

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2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [67] Motion For Summary Judgment as to First Claim for Relief in Plaintiff's
Complaint (Hilton, Lawrence)

FR. 6-4-19; 8-14-19

Docket 67

***** VACATED *** REASON: CONTINUED 10-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By

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Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapt v. CELLCO Partnership

#2.00 Hearing
RE: [55] Motion to Amend (related document(s)1 Complaint) Notice Of Motion And Motion For Leave To Modify Scheduling Order To Permit Filing Of First Amended Complaint; Memorandum Of Points And Authorities; Declarations Of Thomas J. Eastmond And Linda Lee In Support with proof of service

fr. 4-23-19; 5-7-19; 7-17-19; 8-20-19

Docket 55

Tentative Ruling:

9/16/2019

For the reasons set forth below, the Motion is GRANTED IN PART and DENIED IN PART. Only the allegations pertaining to the \$803,600.26 in payments made within the one year period prior to the Petition Date relate back. The Trustee will be permitted to amend the Complaint to substitute the preference allegation with a fraudulent transfer allegation, but only with respect to the \$803,600.26 in payments already alleged in the Complaint.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Leave to Modify Scheduling Order to Permit Filing of First Amended Complaint [Doc. No. 55] (the "Motion")
- 2) Defendant Cellco Partnership's Response in Opposition to Plaintiff's Motion to Amend Complaint [Doc. No. 61] (the "Opposition")
- 3) Reply to Opposition to Motion for Leave to Modify Scheduling Order to Permit Filing of First Amended Complaint [Doc. No. 70] (the "Reply")

I. Facts and Summary of Pleadings

JW Wireless, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on May 17, 2016 (the "Petition Date"). On April 10, 2018, the Chapter 7 Trustee (the "Trustee") filed an avoidance action (the "Complaint") against Cellco Partnership dba Verizon Wireless ("Verizon") and other defendants. The Complaint alleges that the Debtor

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made preferential transfers to or for the benefit of Verizon of \$1,626.44 within ninety days of the Petition Date, and that the Debtor made preferential transfers to or for the benefit of Verizon of \$803,600.26 within one year of the Petition Date. The Complaint further alleges that Verizon is an insider, because it exercised control over the Debtor by requiring the Debtor to liquidate stores and use the funds to pay off the Debtor's line of credit with Verizon.

On July 18, 2018, after having conducted an initial Status Conference, the Court entered a Scheduling Order [Doc. No. 25] fixing August 16, 2018 as the deadline to amend pleadings and/or join parties. On April 2, 2019, the Trustee filed the instant Motion, which seeks leave to modify the Scheduling Order to permit the Trustee to file a First Amended Complaint (the "FAC"). The hearing on the Motion was continued several times by stipulation to permit mediation to occur. A mediation conference was conducted on August 23, 2019, at which a settlement with respect to nine of the defendants was reached. Doc. No. 101. However, no settlement was reached with respect to Verizon, which opposes the Motion.

A. Summary of the Trustee's Motion for Leave to Amend the Complaint

The Trustee makes the following arguments and representations in support of the Motion:

In his pre-litigation analysis of the Debtor's books and records, the Trustee discovered that the Debtor made payments of \$803,600.26 to Verizon within the one year period prior to the Petition Date. The payments could not be traced to any contemporaneous shipments of Verizon products or other value to Debtor, and therefore appeared to have been made on account of antecedent debts. Accordingly, the Complaint alleged a single claim for relief against Verizon, to avoid and recover a preferential transfer of \$803,600.26 for the benefit of the estate.

On December 24, 2019, the Trustee served requests for production (the "RFPs") on Verizon, seeking invoices issued by Verizon to the Debtor. The Trustee granted Verizon two extensions of time to respond to the RFPs. On February 22, 2019, Verizon produced 58 pages in response to the RFPs, but explained that it had not yet collected all responsive documents and would supplement its production once it had collected the remaining documents. As of the date of the filing of the Motion, the additional documents have not been produced.

The documents produced contained a summary of payments from the Debtor to Verizon (the "Payment Summary"). The Trustee's financial advisors performed a

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forensic investigation of the Debtor's books and records in light of the information contained in the Payment Summary. The forensic analysis revealed that the Debtor made payments in excess of \$29 million to Verizon, but that the payments were for merchandise shipped to Stellar Connections, Inc. ("Stellar"), not to the Debtor. Stellar is another venture in which two of the Debtor's principals hold an interest.

The Trustee seeks leave to amend the Complaint to allege that:

- 1) The Debtor paid Verizon \$29 million between February 2013 and May 2016.
- 2) Such payments are avoidable as constructively fraudulent transfers. The Debtor received no value from Verizon in exchange for these payments. Instead, these payments consisted of payments for goods shipped and delivered to stores owned by Stellar.

Good cause exists to modify the Scheduling Order to permit the filing of the proposed FAC. The Trustee has acted diligently in investigating and discovering the true facts concerning the Debtor's finances. The Trustee filed the Motion only three weeks after receiving the forensic accounting report on the Debtor's finances from his financial advisors. If amendment were not permitted, the bankruptcy estate would suffer severe prejudice, as the Trustee was not aware of the over \$29 million in fraudulent conveyances, which were not disclosed in the Debtor's schedules or statement of financial affairs.

B. Summary of Verizon's Opposition to the Motion

Verizon opposes the Motion, and makes the following arguments and representations in support of its Opposition:

The Trustee has not shown good cause to amend the Scheduling Order because the Trustee has failed to show that he diligently investigated the \$29 million in transfers. The Trustee had access to the Debtor's bank statements showing the transfers during the three years following his appointment, but failed to serve any discovery on Verizon prior to the deadline to amend pleadings.

The proposed amendment is futile because it is barred by the statute of limitations. Pursuant to § 546(a), the two-year limitations period on avoidance actions expired on May 17, 2018. The Motion was not filed until April 2, 2019, almost eleven months after the limitations period expired.

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The only basis upon which the proposed FAC could be timely is if it related back to the date of the filing of the Complaint under Civil Rule 15(c)(2). An amendment relates back when it “asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.” Civil Rule 15(c)(2). Only the \$803,600.26 of individual payments alleged in the Complaint could even arguably fall within the scope of the relation back rule. Courts have held that each transfer constitutes a distinction transaction for purposes of Civil Rule 15(c)(2). *See, e.g., In re MBC Greenhouse Co.*, 307 B.R. 787, 793 (Bankr. D. Del. 2004) (plaintiff could not relate back amended preference complaint adding new transfers); *In re Austin Driveway Servs., Inc.*, 179 B.R. 390, 393 (Bankr. D. Conn. 1995) (each transfer “is an isolated event”); *In re Slaughter Co. & Assoc., Inc.*, 242 B.R. 97, 102-03 (Bankr. N.D. Ga. 1999) (relation back to “bootstrap new transactions into viable actions is an abuse of due process which cannot be allowed, even to maximize recovery to the estate”); *In re New Bedford Capacitor, Inc.*, 301 B.R. 375, 380 (Bankr. D. Mass. 2003); *In re Kam Kuo Seafood Corp.*, 67 B.R. 304, 308 (Bankr. S.D.N.Y. 1986) (denying relation back to additional payments under preference theory).

Even if not barred by the statute of limitations, the proposed FAC would be futile on the merits of substantive law as well. A fraudulent transfer claim must allege that the debtor did not receive reasonably equivalent value for the transfer. The Trustee alleges in only a conclusory fashion that the Debtor did not receive reasonably equivalent value for the payments allegedly made to Verizon. The Trustee concludes that the Debtor received no value because the goods were shipped to the Debtor’s affiliate, Stellar. The Trustee presents no evidence for this allegation, which contradicts the Trustee’s allegations in an avoidance action filed against Stellar in its bankruptcy case, pending before Judge Zurzolo. In that proceeding, the Trustee alleges that Stellar caused a payment of \$2.5 million to be directed to Verizon, in satisfaction of obligations owed not by Stellar, but by the Debtor. The Trustee alleges that the \$2.5 million paid to Verizon was a fraudulent transfer with respect to Stellar, because the debt was the Debtor’s obligation.

In addition, the proposed FAC fails to allege facts sufficient to show that the Debtor did not indirectly receive benefits through its relationship with its affiliate Stellar on account of the payments. Here, the Debtor received reasonably equivalent value on account of the shipments to Stellar because Stellar subsequently transferred funds to the Debtor.

Allowing amendment would be prejudicial to Verizon because Verizon would be

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required to search for documents and witnesses dating back to 2013, making it difficult for Verizon to defend itself.

The proposed amendment should be denied because it is not sought in good faith. After three years of access to the Debtor's records, which reflect payments to Verizon, the Trustee sought to amend the Complaint only after Verizon provided the Trustee authority showing that the Trustee's preference theory failed because the Trustee could not show that Verizon is an insider.

Finally, the Court should deem the Trustee to have abandoned his preference claim and should dismiss that claim as moot.

C. Summary of the Trustee's Reply

The Trustee makes the following arguments and representations in his Reply in support of the Motion:

The proposed FAC is not barred by the statute of limitations because the claims relate back to the Complaint. Where, as here, the factual situation out of which the action arises remains the same and has brought to the party's attention, a change in the legal theory on which the action is prosecuted does not defeat relation back. *See Santana v. Holiday Inns, Inc.*, 686 F.2d 736, 738–39 (9th Cir. 1982).

In *Mendelsohn v. Mack Fin. Corp. (In re Frank Santora Equip. Corp.)*, 202 B.R. 543 (Bankr. E.D.N.Y. 2009), the court found that an amended complaint related back on facts mirroring those presented here. The Trustee sought to amend his original preference complaint to assert a fraudulent transfer claim, which the Trustee discovered after reviewing discovery produced by the defendant. The *Mendelsohn* court held that the proposed new fraudulent transfer claim "arises from the same transaction as the preference claim." *Mendelsohn*, 202 B.R. at 545.

There is no merit to Verizon's contention that the proposed FAC fails to state a claim for fraudulent transfer. Verizon contends that the FAC fails because it does not sufficiently allege facts showing that Verizon did not receive an indirect benefit from the transfers as a result of its relationship with Stellar. However, once the Trustee has shown that the transfer was for the benefit of a third party, it is Verizon's burden to prove that the indirect benefit doctrine applies. *Unencumbered Assets Tr. v. Biomar Techs., Inc. (In re Nat'l Century Fin. Enters.)*, 341 B.R. 198, 217 (Bankr. S.D. Ohio 2006).

Contrary to Verizon's argument, the Trustee has sought leave to amend in good faith. The Trustee promptly provided the Payment Summary to his financial advisors

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after it was produced by Verizon in discovery. Within three weeks of receiving an analysis from his financial advisors, the Trustee filed the Motion. The Trustee has not engaged in dilatory conduct in this unusually complex case.

Verizon claims that it will be prejudiced by the proposed FAC because it will have to locate documents and witnesses from six years ago. Verizon's argument overlooks the fact that a fraudulent transfer claim has a four year look-back period to begin with. Verizon is a large corporation and has not explained why it will be unable to locate records and witnesses from only six years ago.

II. Findings and Conclusions

A. The Proposed FAC Relates Back, But Only With Respect to the \$803,600.26 in Payments Alleged in the Complaint

Section 546(a) requires the Trustee to commence an avoidance action within "2 years after the entry of the order for relief." The Debtor sought bankruptcy protection on May 17, 2016. The Trustee was required to commence all avoidance actions by no later than May 17, 2018.

The Trustee filed the Motion seeking leave to amend on April 2, 2019. The Trustee could not commence a separate avoidance action against Verizon. Therefore, the proposed FAC is time-barred unless it relates back to the Complaint.

Civil Rule 15(c) provides: "An amendment to a pleading relates back to the date of the original pleading when the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading."

"An amended claim arises out of the same conduct, transaction, or occurrence if it 'will likely be proved by the "same kind of evidence" offered in support of the original pleading.' To relate back, 'the original and amended pleadings [must] share a common core of operative facts so that the adverse party has fair notice of the transaction, occurrence, or conduct called into question.' The relation back doctrine of Rule 15(c) is 'liberally applied.'" *ASARCO, LLC v. Union Pac. R. Co.*, 765 F.3d 999, 1004 (9th Cir. 2014) (internal citations omitted). In addition:

In deciding whether an amendment to state a new claim against the original defendant is proper, the policies underlying the statute of limitations are implicated. *See Santana v. Holiday Inns, Inc.*, 686 F.2d 736, 738–39 (9th Cir.1982). Thus, amendment of a complaint is proper if the original pleading put the defendant on notice of the "particular

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transaction or set of facts" that the plaintiff believes to have caused the complained of injury. *Id.* at 739. Fairness to the defendant demands that the defendant be able to anticipate claims that might follow from the facts alleged by the plaintiff. *See, e.g., id.* ("It is apparent from [the plaintiff's] original complaint that [the defendant] was not taken by surprise by the addition of the claim for interference with employment relations."); *see also Grattan v. Burnett*, 710 F.2d 160, 163 (4th Cir.1983) (observing that "the Title VII proceedings should have put defendants on notice of the possibility that [the plaintiffs] might bring claims under the Civil Rights Act"), *aff'd*, 468 U.S. 42, 104 S.Ct. 2924, 82 L.Ed.2d 36 (1984).

Percy v. San Francisco Gen. Hosp., 841 F.2d 975, 979 (9th Cir. 1988).

The Complaint alleges that the Debtor paid Verizon \$803,600.26 within the one year period prior to the Petition Date, and seeks to avoid the payments as a preference. The proposed FAC alleges that the Debtor paid Verizon \$29 million within an approximately three year period prior to the Petition Date, and seeks to avoid the payments as a constructively fraudulent transfer.

The Court finds that the only conduct alleged in the proposed FAC that relates back to the Complaint is the Debtor's payments to Verizon of \$803,600.26 within the one year period prior to the Petition Date. The Complaint put Verizon on notice that it was required to defend itself against the Trustee's attempt to avoid payments of \$803,600.26. Verizon could reasonably have anticipated that the Trustee might seek to amend the Complaint to allege that the payment was a constructively fraudulent transfer rather than a preference. "[A]n amendment which changes the legal theory on which an action initially was brought is of no consequence to the question of relation back if the factual situation out of which the action arises remains the same and has been brought to the defendant's attention by the original pleading." *Santana v. Holiday Inns, Inc.*, 686 F.2d 736, 739 (9th Cir. 1982).

The FAC's allegations regarding the Debtor's payment of approximately \$28 million to Verizon between February 2013 and May 2015 do not relate back to the Complaint. In *Peltz v. CTC Direct (In re MBC Greenhouse Co.)*, 307 B.R. 787 (Bankr. D. Del. 2004), the estate representative sought leave to amend a preference action to include allegations that an additional 39 transactions, in the aggregate amount of approximately \$8 million, were avoidable as preferences. The *MBC Greenhouse* court found that the proposed amended complaint did not relate back. It reasoned that the proposed amended complaint alleged "a whole new set of specific

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transactions" that were "distinct from the ones set forth in the original complaint." *MBC Greenhouse*, 307 B.R. at 793. The court further explained that aside "from their characterization as preferential transfers and similar payees there is no commonality between the thirty nine transactions (except as to one) and the six separate transactions alleged in the original complaint." *Id.* at 794.

As was the case in *MBC Greenhouse*, the FAC does not contain sufficient allegations to show that the additional \$28 million in payments alleged in the FAC are related to the \$803,600.26 in payments alleged in the Complaint. The FAC is devoid of specific factual allegations establishing that these additional payments were part of the same scheme. The fact that both sets of payments were between the Debtor and Verizon is immaterial; in *MBC Greenhouse*, the payments also involved similar payees. *MBC Greenhouse*, 307 B.R. at 794.

In *New Bedford Capacitor, Inc. v. Sexon Can Co. (In re New Bedford Capacitor, Inc.)*, 301 B.R. 375, 380 (Bankr. D. Mass. 2003), the court reached the same result as in *MBC Greenhouse*. The *Bedford* court found that not all payments made during the preference period were part of the same transaction and held that the addition of a new transaction would not relate back. The fact that the transaction was between the same parties did not change the result: "the debtor-creditor relationship alone is insufficient to warrant the conclusion that all payments during the preference period are part of the same conduct, transaction or occurrence." *Bedford*, 301 B.R. at 380.

In *Gordon v. Slaughter (In re Slaughter Co. & Assoc., Inc.)*, 242 B.R. 97, 103 (Bankr. N.D. Ga. 1999), the court likewise held that an amended complaint which included additional allegedly preferential transfers did not relate back. The court held that "to allow the Trustee to use the relation-back doctrine to bootstrap new transactions onto viable actions is an abuse of due process which cannot be allowed, even to maximize recovery to the estate." *Slaughter*, 242 B.R. at 102–103.

To the extent the Trustee relies upon *Mendelsohn v. Mack Fin. Corp. (In re Frank Santora Equip. Corp.)*, 202 B.R. 543 (Bankr. E.D.N.Y. 2009) to argue that the \$28 million in payments made between May 2013 and May 2015 relate back, such reliance is misplaced. In *Mendelsohn*, the court held that an amended complaint which replaced a preference claim with a fraudulent transfer claim related back. However, the amended complaint in *Mendelsohn* involved the same transaction; unlike the proposed FAC at issue here, it did not allege additional transactions. *Mendelsohn*, 202 B.R. at 544. Consistent with *Mendelsohn*, the Court finds that with respect to the \$803,600.26 payment alleged in the Complaint, the amendment which substitutes a fraudulent transfer claim for a preference claim does relate back. However, nothing in

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Mendelsohn supports the Trustee's contention that allegations pertaining to an additional \$28 million in payments which were not alleged in the Complaint can relate back.

B. The Trustee is Granted Leave to Amend

Because the Court has entered a Scheduling Order, the Trustee's request for leave to amend is governed by *both* Civil Rules 16 and 15. As the Ninth Circuit has held, "[o]nce the ... court has filed a pretrial scheduling order pursuant to [Civil Rule] 16 ... that rule's standards [control]" with respect to a request for leave to amend. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Civil Rule 16(b)(4) provides that a scheduling order "shall not be modified except upon a showing of good cause and by leave of the ... judge." Civil Rule 16's "good cause" standard "primarily considers the diligence of the party seeking the amendment. The ... court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson*, 975 F.2d at 609.

If the Trustee can demonstrate "good cause" under Civil Rule 16, the Trustee must then show that amendment is also appropriate under Civil Rule 15. *See Johnson*, 975 F.2d at 609 (explaining that the "party seeking to amend [the] pleading after [the] date specified in [the] scheduling order must first show 'good cause' for amendment under Rule 16(b), then, if 'good cause' be shown, the party must demonstrate that amendment was proper under Rule 15").

The Court finds that the Trustee has diligently prosecuted the Complaint. The Trustee sought leave to amend shortly after his financial advisors conducted an additional review of the Debtor's books and records that was informed by the Payment Summary produced by Verizon. It is true that the Trustee did not serve discovery upon Verizon until after the deadline for seeking leave to amend had expired. However, given the complexity of this action—which involves ten defendants—it cannot be said that the Trustee unduly delayed propounding discovery.

Having found that the Trustee has shown "good cause" under Civil Rule 16 with respect to the request for leave to amend, the Court next considers whether the Trustee has satisfied Civil Rule 15. Under Civil Rule 15, the "court should freely give leave [to amend] when justice so requires." However, "[l]eave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Verizon argues that amendment would be futile because the proposed FAC fails to

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state a fraudulent transfer claim. Verizon's theory is that the Trustee has failed to allege facts showing that Verizon did not indirectly benefit from the value received by its affiliate, Stellar. Verizon's argument misconceives the burden of proof that applies to the indirect benefit doctrine. "[O]nce a plaintiff has established that consideration for the transfer passed to a third-party, the burden of demonstrating and quantifying reasonably equivalent value for the transfer shifts to the defendant." *Unencumbered Assets Trust v. Biomar Technologies, Inc. (In re Nat. Century Fin. Enterprises, Inc.)*, 341 B.R. 198, 217 (Bankr. S.D. Ohio 2006). It is Verizon's burden of proof to assert the indirect benefit doctrine as a defense. The proposed FAC is not required to allege facts sufficient to defeat a defense which may be asserted by Verizon. Consequently, Verizon has not shown that the claims alleged in the proposed FAC are futile.

Nor has the Trustee sought leave to amend in bad faith. Verizon maintains that the real reason for the proposed amendment was not information provided by the Trustee's forensic accountants, but instead Verizon's furnishing of the Trustee with authority showing infirmities in its preference claim. The Court finds that while perhaps the authority supplied by Verizon played some role in the Trustee's decision to seek leave to amend, the primary factor motivating the decision was information the Trustee received from the forensic accounting conducted by his financial advisors.

Verizon contends that bad faith exists on the ground that the proposed FAC contains allegations inconsistent with those of a complaint filed by the Trustee in an action pending before Judge Zurzolo. In that action, brought on behalf of the Stellar estate (the "Stellar Action"), the Trustee alleges that Stellar caused a payment of \$2.5 million to be directed to Verizon, in satisfaction of obligations owed not be Stellar, but by the Debtor. All that can be inferred from the allegations in the Stellar Action is that the Debtor had an obligation of \$2.5 million to Verizon. The existence of such an obligation is not necessarily inconsistent with the allegation that the \$803,600.26 in payments from the Debtor to Verizon at issue here were constructively fraudulent.

Allowance of the proposed amendment will not unduly prejudice Verizon. As noted, from the outset of this litigation Verizon has been on notice that it would be required to defend its receipt of the \$803,600.26 in payments. The change in the Trustee's legal theory is not prejudicial, as Verizon could reasonably have anticipated the possibility that the Trustee would seek avoidance under a fraudulent transfer theory rather than a preference theory.

Finally, as discussed above, leave to amend will not result in undue delay. The Trustee sought leave to amend shortly after an analysis of materials propounded in discovery revealed the necessity of seeking avoidance on a fraudulent transfer theory.

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III. Conclusion

Based upon the foregoing, the Motion is GRANTED IN PART and DENIED IN PART. Only the allegations pertaining to the \$803,600.26 in payments made within the one year period preceding the Petition Date relate back. The Trustee will be permitted to amend the Complaint to substitute the preference allegation with a fraudulent transfer allegation, but only with respect to the payments of \$803,600.26.

The Trustee shall file a First Amended Complaint by no later than **October 1, 2019**. Upon the filing of the First Amended Complaint, the Clerk of the Court will issue a Summons and Notice of Status Conference, which will set litigation deadlines, including the date of a Status Conference.

Within seven days of the hearing, the Trustee shall submit a proposed order incorporating this tentative ruling by reference. **[Note 1]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

[Note 1]

To ensure that Verizon has the opportunity to review the Trustee's proposed order as to form, the Trustee shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Verizon's endorsement as to the form of the proposed orders pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

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Defendant(s):

CELLCO Partnership dba Verizon	Represented By Lawrence J Hilton
BJ Mobile, Inc., a California	Represented By Kelvin J Lo
JETWORLD, Inc., a California	Represented By Gary M Jackson
JW Wireless OKC, an Oklahoma	Represented By Kelvin J Lo
JWK Management, Inc., a California	Represented By Michael H Yi
JETSTAR Auto Sports, Inc., a	Represented By Gary M Jackson
Shaigan Ben Her, an individual	Represented By Kelvin J Lo
Lea Young Lee, an individual	Represented By Gary M Jackson
Joan Yu, an individual	Represented By Kelvin J Lo
Chu Feng Yu, an individual	Represented By Kelvin J Lo
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his	Represented By Thomas J Eastmond Robert P Goe
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Trustee(s):

John J Menchaca (TR)	Represented By Robert P Goe
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Thomas J Eastmond

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2:11-57514 Sondra Derderian

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#1.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18;
8-14-18; 2-12-19; 6-18-19

Docket 0

Tentative Ruling:

9/16/2019

No appearances are required. This is a post-confirmation status conference. Based upon the Court's review of the Reorganized Debtor's Post-Confirmation Status Conference Report [Doc. No. 361] and the Reorganized Debtor's Response to Order Requiring Reorganized Debtor to Appear and Show Cause Why This Case Should Not Be Dismissed [Doc. No. 362], it is hereby ORDERED that:

1. The Reorganized Debtor shall file the executed settlement agreement no later than December 17, 2019.
2. The Reorganized Debtor shall file a motion for an order and final decree no later than January 16, 2020.
3. The Status Conference and the Order to Show Cause hearing are CONTINUED to February 11, 2020, which shall be both taken off calendar provided that a final decree is entered and the case is closed. Unless the Post-Confirmation Status Conference is taken off calendar, an additional status report is due 14 days prior to the hearing.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

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2:11-57514 Sondra Derderian

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#2.00 Show Cause Hearing
RE: [339] . Order Requiring Reorganized Debtor To Appear And Show Cause
Why This Case Should Not Be Dismissed.

FR. 7-10-19

Docket 339

Tentative Ruling:

9/17/2019

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A. Stubbe

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2:18-18022 Andrew's & Son Tradings Inc.

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#3.00 Hearing
RE: [97] Confirmation of chapter 11 Plan

fr. 4-9-19; 6-19-19

Docket 97

Tentative Ruling:

9/16/2019

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Second Amended Chapter 11 Plan of Reorganization [Doc. No. 106] (the "Plan")
2. Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization [Doc. No. 107]
3. Order Granting Debtor's Motion for Approval of Adequacy of Debtor's First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Liquidation [Doc. No. 111]
4. Stipulation by Ally Financial Inc. and Andrew's & Sons Tradings, Inc. for Adequate Protection 362 Stay Resolving Motion for Relief from Automatic Stay, for Adequate Protection and Plan Treatment on Lien Secured by Ford Truck F650 [Doc. No. 72]
5. Order: (1) Approving Adequate Protection Stipulation and (2) Vacating Hearing on Motion for Relief From the Automatic Stay [Doc. No. 74]
6. Stipulation by Andrew's & Son Trading Inc. and Stipulation for Adequate Protection and Plan Treatment of Proof of Claim 5 Regarding Tesla Model S and Resolution of Motion for Relief From the Automatic Stay (Personal Property) Between Debtor and JPMorgan Chase Bank, N.A. [Doc. No. 79]
7. Order Granting Motion for Relief From the Automatic Stay Personal Property (Between Debtor and JP Morgan Chase Bank, N.A.) [Doc. No. 81]
8. Stipulation Between Debtor and First General Bank Re: Plan Treatment of Proof of Claim Numbers 10 and 11 [Doc. No. 109]
9. Order Stipulation Between Debtor and First General Bank Re: Plan Treatment of

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- Proof of Claim Numbers 10 and 11 [Doc. No. 112]
10. Debtor's Notice of: (1) Deadline to Return Ballots; and (2) Hearing on Motion Regarding Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 113]
 11. Proof of Service [Doc. No. 114]
 12. Plan Ballot Summary [Doc. 118]
 13. Notice of Motion and Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization Filed as of April 16, 2019 [Doc. 119]
 14. Scheduling Order Regarding Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization. [Doc. No. 126] (the "Scheduling Order")
 15. Plan Ballot Summary (Regarding Second Amended Chapter 11 Plan) [Doc. 130]
 16. Status Report in Support of Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization filed as of April 16, 2019. [Doc. No. 131] (the "Supplemental Status Report")
 17. As of the preparation of this tentative ruling, no opposition has been filed.

I. Facts and Summary of Pleadings

Debtor-in-possession, Andrew's & Sons Tradings, Inc. dba Beston Shoes (the "Debtor"), filed this voluntary chapter 11 case on July 13, 2018 (the "Petition Date"). On June 27, 2019, the Court issued the Scheduling Order continuing the confirmation hearing. *See* Doc. No. 126. The Court further directed the Debtor to reopen voting for certain non-voting classes, with supplemental notice to the affected creditors. *See id.* The supplemental notice had to unambiguously inform creditors that the deadline to submit a ballot had been extended to July 26, 2019, and that failure to timely cast a vote would be deemed acceptance of the Plan. *See id.* The Debtor complied with the directive, timely filing proof of service evidencing supplemental notice to such classes. *See* Doc. No. 125. On August 19, 2019, the Debtor filed a Plan Ballot Summary, indicating that only one of the non-voting classes had submitted a vote in the interim. *See* Doc. No. 130. Having reviewed the Supplemental Status Report, the Court finds it appropriate to CONFIRM the Plan.

Summary of the Plan

Class 1 – First General Bank – Accepts the Plan

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Class 1 consists of the secured claim of First General Bank ("Loan 1"). First General Bank ("FGB") holds a first-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$110,894.08. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$1,155.25 for a period of twelve years. FGB will retain its lien until paid in full.

FGB's claim is impaired and it voted to accept the Plan.

Class 2 – FGB – Accepts the Plan

Class 2 consists of the secured claim of FGB ("Loan 2"). FGB holds a second-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$73,991.14. The Debtor proposes to pay FGB in full, plus 7.25% interest, by making monthly payments of \$863.40 for a period of ten years. FGB will retain its lien until paid in full.

FGB's claim is impaired and it voted to accept the Plan.

Class 3 – Amazon Capital Services, Inc. – Deemed to Accept the Plan (No Ballot Cast Following Supplemental Notice)

Class 3 consists of the secured claim of Amazon Capital Services, Inc. ("ACS"). ACS holds a third-priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$477,488.27. The Debtor proposes to pay ACS in full, plus 5% interest, by making monthly payments of \$4,416 for a period of twelve years. ACS will retain its lien until paid in full.

ACS's claim is impaired and ACS was entitled to vote on the Plan, but did not cast a ballot. ACS did not cast a ballot even after further notice that voting had been reopened as to Class 3.

Class 4 – Kings Cash Group – Deemed to Accept the Plan (No Ballot Cast Following Supplemental Notice)

Class 4 consists of the secured claim of Kings Cash Group ("KCG"). KCG holds a fourth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$249,512.85. The Debtor proposes to treat KCG's claim as entirely unsecured and to pay KCG pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. KCG's lien will be avoided upon confirmation

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of the Plan pursuant to § 1141(c).

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KCG's claim is impaired and KCG was entitled to vote on the Plan, but did not cast a ballot. KCG did not cast a ballot even after further notice that voting had been reopened as to Class 4.

Class 5 – EBF Partners, LLC dba Everest Business Funding and Corporation Services Company – Accepts the Plan

Class 5 consists of the secured claim of EBF Partners, LLC dba Everest Business Funding and Corporation Service Company ("EBF"). EBF holds a fifth priority blanket security lien against the Debtor's assets, which secures debt in the amount of \$246,734.40. The Debtor proposes to treat EBF's claim as entirely unsecured and to pay EBF pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9. EBF's lien will be avoided upon confirmation of the Plan pursuant to § 1141(c).

EBF's claim is impaired and while EBF failed to previously cast a ballot, it voted to accept the Plan following additional notice that voting reopened as to Class 5.

Class 6 – Ally Financial – Accepts the Plan

Class 6 consists of the secured claim of Ally Financial ("Ally"). Ally holds a secured lien against the Debtor's 2011 Ford Truck F650, which secures debt in the amount of \$20,178.97. On or about November 20, 2018, the Debtor entered into an adequate protection stipulation with Ally [See Doc. Nos. 72, 74]. The Debtor proposes to pay Ally in full, plus 5.5% interest, by making monthly payments of \$490 through November 1, 2022 or until the claim is paid in full. Ally will retain its lien until paid in full.

Ally's claim is impaired and it voted to accept the Plan.

Class 7 – JP Morgan Chase Bank, N.A. – Accepts the Plan

Class 7 consists of the secured claim of JP Morgan Chase Bank, N.A. ("Chase"). Chase holds a secured lien against the Debtor's 2015 Tesla Model S, which secures debt in the amount of \$47,414.57. On or about January 7, 2019, the Debtor entered into an adequate protection stipulation with Chase [See Doc. Nos. 79, 81]. The Debtor proposes to pay Chase in full, plus 5% interest, by making monthly payments

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of \$895 for a period of 60 months, or until the claim is paid in full. Chase will retain its lien until paid in full.

Chase's claim is impaired and it voted to accept the Plan.

Class 8 – Hong Kong Motors – Deemed to Accept the Plan (No Ballot Cast Following Supplemental Notice)

Class 8 consists of the secured claim of Hong Kong Motors ("HKM"). HKM holds a secured lien against the Debtor's 2007 Nissan Altima, which secures debt in the amount of \$4,500. The Debtor proposes to bifurcate HKM's claim into a secured claim of \$2,835 (which the Debtor states is the current value of the collateral) and an unsecured claim of \$1,665. The Debtor proposes to pay HKM's secured claim in full, plus 5% interest, by making monthly payments of \$53 for a period of 60 months. HKM will retain its lien, up to the value of the collateral, until the secured portion of its claim is paid in full. The Debtor proposes to pay HKM's unsecured claim pursuant to the proposed terms of repayment for other general unsecured creditors in Class 9.

HKM's claim is impaired and HKM was entitled to vote on the Plan, but did not cast a ballot. HKM did not cast a ballot even after further notice that voting had been reopened as to Class 8.

Class 8(b) – New Commercial Capital – Deemed to Reject the Plan

Class 8(b) consists of the secured claim of New Commercial Capital ("NCC"). NCC has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that NCC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent NCC has a lien against any of the Debtor's assets, the Debtor proposes to strip NCC's lien as of the Effective Date.

NCC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(c) – Corporation Service Company as Representative – Deemed to Reject the Plan

Class 8(c) consists of the secured claim of Corporation Service Company as Representative ("CSC"). CSC has not filed a proof of claim in this case but recorded

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a UCC against the Debtor. The Debtor disputes that CSC holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that CSC has a lien against any of the Debtor's assets, the Debtor proposes to strip CSC's lien as of the Effective Date.

CSC will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(d) – Bank of the West – Deemed to Reject the Plan

Class 8(d) consists of the secured claim of Bank of the West ("BoW"). BoW has not filed a proof of claim in this case but recorded a UCC against the Debtor. The Debtor disputes that BoW holds a valid lien or is entitled to any distribution under the Debtor's Plan. To the extent that BoW has a valid lien against any of the Debtor's assets, the Debtor proposes to strip BoW's lien as of the Effective Date.

BoW will not be paid anything under the Debtor's Plan, so it is deemed to have rejected the Plan pursuant to § 1126(g).

Class 8(e) – Employment Development Department – Unimpaired (Deemed to Accept)

Class 8(e) consisted of the secured claim of Employment Development Department ("EDD"). EDD filed a proof of claim asserting entitlement to a distribution of \$47.18. The Debtor has already paid EDD's claim in full.

Accordingly, EDD is not impaired, was not entitled to vote, and is deemed to accept the Plan.

Class 9 – General Unsecured Claims – Accepts the Plan

Class 9 consists of general unsecured claims ("GUC") totaling \$2,377,121. The Debtor proposes to pay \$47,542.42, which represents approximately 2% of the total GUC claims, by making pro rata monthly payments of \$792.37 for a period of five years.

Class 9 is impaired and has voted to accept the Plan.

Class 10 – Equity Interests – Unimpaired (Deemed to Accept)

Class 10 consists of Jiazheng Lu's 100% equity interest in the Debtor. Mr. Lu is

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an insider. Under the Plan, Mr. Lu will retain 100% of his ownership interest in the Debtor.

Mr. Lu's claim is not impaired and he was not entitled to vote on the Plan.

The Debtor estimates that it will have approximately \$60,622.83 in administrative claims on the Effective Date and submits that it has sufficient cash on hand to pay all allowed administrative claims in full as required.

As of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The plan is confirmed.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

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The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan provides that the Debtor does not have any priority tax claims. In addition, the Plan appropriately classifies administrative expense claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that only Classes 8(e) and 10 are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment afforded to each impaired class—Classes 1 – 8(d) and 9. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Court previously determined that Classes 1 – 3 were similarly situated

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secured creditors, but the Plan treated Class 3 differently to the extent a lower rate of interest was offered to Class 3 than Classes 1 and 2. *See* Doc. No. 126. However, as ACS, the claimant in Class 3, failed to submit a ballot following renewed notice, ACS is deemed to accept the Plan. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by income generated by Debtor's pre- and post-confirmation business operations. The Plan Proponent anticipates Debtor having approximately \$63,341.94 of cash on hand on the Effective Date of the Plan to pay effective date payments of approximately \$45,619.62. *See* Second Amended Disclosure Statement. **[Note 1]**

In support, the Plan Proponent submitted the following evidence of Debtor's ability to adequately implement the Plan: 1) historical financial statements for the years 2015, 2016, and 2017 (Disclosure Statement, Exhibit B(3)), 2) Debtor's post-petition income and expenses from July 1, 2018 through January 31, 2019 (Disclosure Statement, Exhibit B(4)), and 3) financial projections for the anticipated duration of the Plan (Disclosure Statement, Exhibit B(5)). Total monthly payments under the plan equal \$8,688.37, and as Debtor's financial projections demonstrate, Debtor will have an average monthly net income of \$8,695 for the duration of the Plan. The proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

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Debtor's Confirmation Brief affirms that the Confirmation Order will contain a provision amending the Debtor's charter to include the requisite language set forth above. The Plan will satisfy § 1123(a)(6) through the proposed inclusion language within the Confirmation Order.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Reorganized Debtor will continue to be managed by the sole shareholder and President, Jiazheng Lu. The Plan will not change or select any officer, director, or trustee. The Plan satisfies § 1123(a)(7).

10. Section 1123(a)(8)

Section 1123(a)(8), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Plan Proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan" [Doc. No. 111]);
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Application to Employ Steven P. Chang, Law Offices of Langley & Chang" [Doc. No. 53]); and
- 3) Filed monthly operating reports.

Accordingly, the Plan Proponent have satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a

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plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Plan Proponent has complied with the requirements of the Code throughout this case. Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith because no party has objected to confirmation. Section 1129(a)(3) is satisfied.

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides that payment of all professional fees is subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses that Mr. Lu, an insider, will remain as sole shareholder and President. In addition, the Debtor delivered Insider Compensation notices on July 18, 2018, which were not opposed. The Declaration by Jiazheng Lu (the "Lu Declaration") filed in support of the Plan and Disclosure Statement further attests to the identity and role of Mr. Lu as insider, as well as his post-confirmation equity

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interests. The Plan satisfies § 1129(a)(5).

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 8(e) and 10 are unimpaired and are deemed to have accepted the Plan. Classes 1 – 8 and 9 have either accepted the Plan or are deemed to have accepted the Plan. *See* Plan Ballot Summary (regarding Second Amended Chapter 11 Plan) [Doc. No. 130]. Classes 8(b), 8(c), and 8(d) are impaired, but did not file a proof of claim in this case. These claims are subject to cram down under § 1129(b). As discussed below, the requirements of § 1129(b) have been satisfied with respect to Classes 8(b), 8(c), and 8(d). The Plan satisfies § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

Classes 8(e) and 10 are unimpaired and are deemed to have accepted the Plan. Classes 1 – 8 and 9 have either accepted the Plan or are deemed to have accepted the Plan. *See* Plan Ballot Summary (regarding Second Amended Chapter 11 Plan) [Doc. No. 130]. Except for such classes subject to § 1129(b), Section 1129(a)(8) is satisfied because all classes of creditors have either accepted the Plan or were deemed to have accepted the Plan.

SECTION 1129(a)(9)

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Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all outstanding allowed administrative claims in full as soon as the fees are approved by the Court and none of the professionals have requested a different payment arrangement. The Plan also provides for payment of priority tax claims in a manner consistent with § 1129(a)(9)(C). The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Classes 1, 2, 5, 6, 7, and 9 are impaired, do not consist of insiders, and have accepted the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtor has sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon its review of the balance sheets, budget projections, and the Lu Declaration included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. To the extent any fees are

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outstanding, the Plan provides that all such fees will be paid by the Effective Date. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

The Plan provides for no payment to Classes 8(b), (c), and (d) ("Classes 8(b)-(d)"), and further provides for the avoidance of the liens asserted by the claimants in these classes. Pursuant to § 1126(g), Classes 8(b)–(d) are deemed to reject the Plan.

Where certain classes are deemed to reject a plan, the plan may still be confirmed "if the plan does not discriminate unfairly, and is fair and equitable" with respect to the rejecting classes. § 1129(b)(1).

Section 1129(b)(2)(A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides one of the following types of treatment:

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- (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

The Debtor contends that there is no reason to believe that any monies are owed to the claimants in Classes 8(b)–(d), who all failed to file proofs of claim in this case.

The Court previously found that in order to obtain a distribution from the estate, the holders of claims in Classes 8(b)–(d) were required to file proofs of claim. *See* Ruling Continuing Confirmation Hearing [Doc. No. 123]. The Court reasoned that because the Debtor scheduled the claims in Classes 8(b)–(d) as "unknown," holders of claims in these classes were effectively on notice of the need to file proofs of claim in the event they wished to receive a distribution from the estate. The Court noted that Fed. R. Bankr. P. 3003(c)(2) requires a creditor holding a claim that is not scheduled or is scheduled as disputed, contingent, or unliquidated to file a proof of claim in order to be treated as a creditor for purposes of voting and distribution. The Court concluded that claimants scheduled as holding "unknown" claims, like claimants, are scheduled as holding disputed, contingent, or unliquidated claims, and required to file a proof of claim in order to be treated as a creditor for voting and distribution purposes.

Because the holders of claims in Classes 8(b)–(d) did not file proofs of claim,

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they do not hold allowed claims and are not entitled to receive a distribution from the estate. Under § 1129(b)(2)(A)(i)(I), Classes 8(b)–(d) are entitled to retain their liens, but only "to the extent of the allowed amount" of their claims. Since they did not hold allowed claims, the Plan's provision avoiding the liens of the claimants in Classes 8(b)–(d) is consistent with § 1129(b)(2)(A)(i)(I). The Plan also satisfies § 1129(b)(2)(A)(i)(II) with respect to these classes. As they do not hold allowed claims, it is not necessary for Classes 8(b)–(d) to receive any cash payments.

In sum, the "fair and equitable" requirement set forth in § 1129(b)(2) is satisfied with respect to Classes 8(b)–(d).

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

Post-Confirmation Status Conference

A Post-Confirmation Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** A Post-Confirmation Status Report shall be filed by no later than fourteen days prior to the hearing.

Discharge

Upon the Effective Date of the Plan (14 days after entry of the order confirming the Plan), the Clerk of the Court is directed to enter an order of discharge.

III. Conclusion

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For the reasons set forth above, the Plan is CONFIRMED.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. The confirmation order shall include a provision directing the Debtor to amend its charter with requisite language pursuant to §1123(a)(6).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court notes that cash Debtor possessed as of the end of April 30, 2019 equaled \$115,908.80 as represented in paragraph 6 of the Declaration of Jiazheng Lu. For the purposes of Section 1123(a)(5)'s feasibility analysis, the Court will proceed with the dollar amounts proffered in the Second Amended Disclosure Statement.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By

Christopher J Langley

Steven P Chang

David Samuel Shevitz

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11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

#100.00 Hearing re [27] *Creditor Ball C M, Inc's Notice Of Objection To Claim Of Homestead Exemption And Objection To Homestead Exemption Claim*

fr. 5-8-19

Docket 0

***** VACATED *** REASON: CONTINUED 3-18-20 AT 11:00 A.M.**

Tentative Ruling:

5/6/2019

For the reasons set forth below, CONTINUE HEARING to September 18, 2019 at 11:00 a.m.

Creditor Ball C M, Inc. ("Movant") seeks an order disallowing the Debtor's \$175,000 homestead exemption pursuant to § 522(o) [Doc. No. 27] (the "Objection to Homestead Exemption"). Section 522(o) "provides that the value of property claimed as a homestead must be reduced to the extent that the value is attributable to any fraudulent transfers of nonexempt property made by the debtor within 10 years prepetition." *In re McNabb*, 326 B.R. 785, 787-88 (Bankr. D. Ariz. 2005) (citing 11 U.S.C. § 522(o)). "In light of Congress' adoption in section 522(o) of the identical 'intent to hinder, delay or defraud' language found in section 548(a)(1)(A) and section 727(a)(2), courts may look to case law under these sections for guidance in construing the requisite intent under section 522(o)." 4 Collier on Bankruptcy, ¶ 522.08 (16th ed. 2019). Accordingly, a debtor's exemptible interest in homestead property should not be reduced absent a showing of specific intent to hinder, delay or defraud, but a party may rely upon certain "badges of fraud" to prove the existence of actual fraud. *Id.*

On March 7, 2019, Movant initiated an adversary proceeding against the Debtor by filing a complaint (the "Complaint") asserting claims under §§ 523(a)(2)(A), (a)(4), (a)(6) and 727(a)(2), (a)(3), (a)(4), and (a)(5) [2:19-ap-01605] (the "Non-Dischargeability Action"). The allegations set forth in the Complaint are substantially

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similar to the assertions underlying Movant's Objection to Homestead Exemption. Accordingly, it appears that any ruling with respect to the instant motion may have preclusive effect and potentially interfere with the Non-Dischargeability Action. Therefore, the Court finds it appropriate to defer ruling on the Objection to Homestead Exemption until the Non-Dischargeability Action has concluded.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

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10:00 AM

2:19-18489 Sandra Del Carmen Gomez

Chapter 7

#1.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 HONDA CR-V, VIN: 7FAR W1H5 6JE0 04850 .

Docket 10

Tentative Ruling:

9/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sandra Del Carmen Gomez

Represented By
Scott Kosner

Trustee(s):

John P Pringle (TR)

Pro Se

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10:00 AM

2:19-18810 Geraier B. Torossian

Chapter 7

#2.00 Hearing

RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: 1HGC R2F1 3HA2 00294 .

Docket 12

***** VACATED *** REASON: Order Granting Motion entered 9-13-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraier B. Torossian

Represented By
David B Golubchik

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-18442 David Canul and Cristian Ramayo

Chapter 7

#3.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 MINI ROADSTER VIN WMWSY1C53FT626192 . (Wang, Jennifer)

Docket 11

Tentative Ruling:

9/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtors, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtors' Statement of Intention in which the debtors stated an intention to surrender the property to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... David Canul and Cristian Ramayo Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

David Canul	Pro Se
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Joint Debtor(s):

Cristian Ramayo	Pro Se
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Trustee(s):

Sam S Leslie (TR)	Pro Se
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**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:19-17841 Soul Hollywood, LLC

Chapter 7

#4.00 Hearing
RE: [14] Motion for Approval of Stipulation for Relief from Automatic Stay

Docket 14

Tentative Ruling:

9/19/2019

Motion GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Approval of Stipulation for Relief from Automatic Stay; Memorandum of Points and Authorities; Declarations of Behzad Nahai, Daniel J. McCarthy, Steven Hakim, and Nick Eliopoulos (the "Motion") [Doc. No. 14]
2. No opposition filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Soul Hollywood, LLC (the "Debtor") filed a voluntary Chapter 7 petition on July 5, 2019 (the "Petition") [Doc. No. 1]. Howard M. Ehrenberg (the "Trustee") was appointed as Chapter 7 trustee. On Schedule G of the Petition, Debtor represents being party to a lease for restaurant facilities located at 7046 Hollywood Blvd., Los Angeles, CA (the "Lease"). *See* Doc. No. 1. On May 15, 2019, the Lessor, 7046 Hollywood, LLC (the "Landlord"), filed an unlawful detainer in state court based on Debtor's breaches, and obtained a favorable ruling to repossess the commercial premises. However, Debtor filed the Petition shortly after the ruling was entered and prior to entry of the state court judgment. Consequently, the Debtor and the Trustee entered into a stipulation for termination and rejection of the Lease, which was approved, without opposition, by this Court's order on August 7, 2019 [Doc. Nos. 4 & 10]. Pursuant to the Lease terms, Debtor tendered \$200,000 to Landlord as security deposit. Eliopoulos Decl., ¶ 1. However, Landlord represents that monetary claims stemming from Debtor's breaches and rejection of the Lease will likely surpass \$200,000 as follows:

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1. \$86,271.05 in rental damages awarded following trial in the unlawful detainer action;
2. \$4,841 in attorneys' fees and \$1,382.06 in costs, which were awarded post-trial in the unlawful detainer action;
3. a total of approximately \$33,744.78, consisting of 1) the monthly base rent under the Lease of \$22,759.04, 2) Debtor's monthly share of property taxes of \$1,147.8, 3) Debtor's monthly share of insurance costs of \$231.88, and 4) Debtor's monthly share of maintenance expenses of \$1,169.85 from the period of June 26 to August 6, 2019; and
4. \$156,515.05 in rejection damages pursuant to § 502(b)(6), which are limited to 15% of the remaining term of the Lease. **[Note 1]**

Motion at 5-6.

To that effect, Landlord and Trustee entered into an additional stipulation for relief from the automatic stay (the "Stipulation"), upon which Landlord will be entitled to offset the \$200,000 security deposit against its anticipated damages, in exchange for a \$4,000 portion of the security deposit to be paid to the Trustee following entry of the unlawful detainer judgment. *See Motion, Ex. A.* In addition, this exchange will serve as full satisfaction of the Debtor's estate to the security deposit. *Id.*

Pursuant to § 362(d)(1), the Landlord herein seeks approval of the Stipulation in order to enter the unlawful detainer judgment, liquidating its claims against Debtor for amounts owed associated with rejection and breach of the Lease. Landlord contends that cause exists under § 362(d)(1) relief because Debtor's estate has no interest left in the security deposit as amounts owed under the Lease will likely exceed \$200,000 as described above. Additionally, Landlord argues that approval of the Stipulation is in the best interest of creditors, who would not otherwise have access to the \$4,000 paid to Trustee in consideration of the Stipulation.

II. Findings of Fact and Conclusions of Law

A party in interest shall obtain relief from the automatic stay in accordance

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with § 362(d)(1), "for cause, including the lack of adequate protection of an interest in property of such party in interest." Given that the meaning of the word "cause" in § 362(d)(1) has not been specifically defined, "discretionary relief from the stay must be determined on a case by case basis." *In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986).

Here, several factors support relief from the automatic stay. First, upon review of the declarations and exhibits attached, it is determined that Landlord has proffered sufficient evidence supporting that the amounts owed by Debtor under the Lease will likely surpass the sum paid as security deposit. Even if Landlord is successful in finding a lessee consenting to pay on terms comparable to the Lease, it is highly probable that Landlord's claims will ultimately exceed \$200,000. As of consequence, the estate's interest in the security deposit would then be zero. Second, it is anticipated that approval of the Stipulation will promote judicial economy, fairness, and equity in this matter. Accordingly, pursuant to the Stipulation, the Debtor's estate is to be supplied with an additional \$4,000, and further expected is that the parties will avoid the expenses and risks of continued litigation. Third, the Court notes that no party submitted an opposition or objection to the Motion. Therefore, pursuant to § 362(d)(1), the Court finds cause to approve the Stipulation.

III. Conclusion

Based on these findings and conclusions, the Court hereby GRANTS the Motion. Movant is to lodge a conforming order within 7 days of this tentative ruling.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: Landlord understands its duty to mitigate damages by re-leasing the property, and represents exercising good-faith efforts to do so. Eliopoulos Decl., ¶ 8. Landlord's managing agent attests that a new lessee has not been found, and he does not expect to find one before November 1, 2019. *Id.* In the unlikely event that a paying lessee is found on or before November 1, 2019, rejection damages will be limited to \$71,707.66, an amount covering rent obligations from August 7, 2019 to October 30, 2019. *Id.* However, this amount, in addition to the sums enumerated in Items 1-3, would total approximately \$197,946.55. *Id.*; *Motion* at 6.

Party Information

Debtor(s):

Soul Hollywood, LLC

Represented By
David S Hagen

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 HearingRE: [2969] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .
(Nalbandyan, Akop)

Docket 2969

Tentative Ruling:

9/19/2019

For the reasons set forth below, the Third Motion (defined below) is GRANTED, but stay relief shall not take effect until September 30, 2019.

Pleadings Filed and Reviewed:

- 1) Final Ruling Granting First Motion for Relief from the Automatic Stay [Doc. No. 2851]
- 2) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 2969] (the "Motion")
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) filed by Jason Shank [Doc. No. 3028]
- 4) Debtor's Response to Third Motion for Relief from the Automatic Stay Filed on Behalf of Jason Shank [Doc. No. 3030]
- 5) Reply to Oppositions to Motion for Relief from the Automatic Stay [Doc. No. 3075] (the "Reply")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Jason Shank ("Movant") seeks stay relief, pursuant to § 362(d)(1), so that Movant may commence an action for wrongful termination against the Debtors. This is the third motion for relief from the automatic stay that Movant has filed (the "Third Motion").

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At a hearing conducted on August 5, 2019, the Court granted Movant's first motion for stay relief (the "First Motion"). The Court ruled that stay relief would take effect on September 30, 2019; that Movant could seek recovery only against applicable insurance; and that Movant could not assert a deficiency claim against the estates. *See* Final Ruling Granting First Motion [Doc. No. 2851].

Also at the August 5 hearing, the Court denied without prejudice Movant's second motion for stay relief (the "Second Motion"), because Movant had failed to give the required 21 days' notice of the Second Motion. Like the First Motion, the Second Motion sought stay relief to permit Movant to pursue a wrongful termination action against the Debtors; however, the Second Motion also sought to preserve Movant's ability to seek recovery beyond applicable insurance. Specifically, the Second Motion provided:

To the extent that the Debtor has an insurance policy that will provide coverage for his wrongful termination claims, [Movant] will pursue relief under said policy. In the event that the insurance carrier does not provide coverage for damages resulting from [Movant's] wrongful termination claims, declines to extend coverage, or there is no insurance coverage, a separate motion for leave will be filed.

[Movant] is concurrently filing a corrected Motion for Relief that corrects this mistake and makes no other changes.

Notice of Errata filed in Support of Second Motion [Doc. No. 2799] at 2.

The Third Motion is substantially identical to the Second Motion, which was denied without prejudice. The Third Motion provides that at the present time, Movant will seek recovery only from insurance. However, the Third Motion preserves Movant's right to file a further motion seeking stay relief in the event that insurance coverage does not exist or proves insufficient.

The Debtors do not oppose the Third Motion, provided that stay relief not take effect until September 30, 2019 (the date already set by the Court in granting the First Motion).

The Official Committee of Unsecured Creditors (the "Committee") argues that stay relief would be premature and could negatively affect the Debtors' bankruptcy cases, given that Movant has preserved his right to seek a recovery beyond applicable insurance at some point in the future.

In his Reply filed in support of the Third Motion, Movant explains that he has

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been unable to ascertain whether the Debtors' insurance policy is applicable to Movant's wrongful termination claims. Movant states that as a result of this uncertainty, it is necessary for him to preserve his right to seek a recovery beyond insurance.

II. Findings and Conclusions

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

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- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

As noted above, the most important of the twelve factors is the effect of the non-bankruptcy litigation on the administration of the estate. *Curtis*, 40 B.R. at 806. The *Curtis* court held that “[e]ven slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit.” *Id.*

The only additional relief sought in the Third Motion that was not granted in connection with the First Motion is the explicit preservation of Movant’s future right to file a further motion for stay relief, for the purpose of pursuing a deficiency claim, should insurance coverage prove inadequate. The Court finds it appropriate to grant this additional relief. The preservation of Movant’s ability to seek additional stay relief in the future will not interfere with the administration of the estate.

Relief from stay shall not take effect until September 30, 2019, the date the Court has already set in granting the First Motion. Absent further order of the Court, Movant may seek recovery only against applicable insurance and may not assert a deficiency claim against the estates; but Movant’s ability to file a future motion for stay relief, for the purpose of pursuing a deficiency claim, is explicitly preserved.

III. Conclusion

Based upon the foregoing, the Third Motion is GRANTED, but stay relief shall not take effect until September 30, 2019. Within seven days of the hearing, Movant shall submit an order incorporating this tentative ruling by reference. **[Note 1]**

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

To ensure that the Debtors have the opportunity to review Movant's proposed orders as to form, Movant shall either (a) submit a *Notice of Lodgment* of the proposed orders in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed orders pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:19-19586 Antonio Delgado Ortiz

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Chevrolet Malibu, VIN: 1G1ZD5ST1JF292135 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

9/19/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Antonio Delgado Ortiz

Represented By
Craig M Lytle

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:19-12402 Ryan James McMillin

Chapter 7

Adv#: 2:19-01137 Elite Optoelectronics Co., Ltd a China Limited Lia v. McMillin et al

#1.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01137. Complaint by G-Sight Solutions, LLC against Ryan James McMillin, G-Sight Solutions, Inc., a California Corporation. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(14 (Recovery of money/property - other)) (Zshornack, Errol)

fr: 8-13-19

Docket 1

Tentative Ruling:

9/23/2019

See Cal. No. 2, below, incorporated in full by reference.

Party Information

Debtor(s):

Ryan James McMillin

Represented By
John A Harbin

Defendant(s):

Ryan James McMillin

Pro Se

G-Sight Solutions, Inc., a California

Pro Se

Plaintiff(s):

Elite Optoelectronics Co., Ltd a

Pro Se

G-Sight Solutions, LLC, a California

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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2:19-12402 Ryan James McMillin

Chapter 7

Adv#: 2:19-01137 Elite Optoelectronics Co., Ltd a China Limited Lia v. McMillin et al

- #2.00** OSC Hearing why the Court should not dismiss the Complaint as to G-Sight RE: [1] Adversary case 2:19-ap-01137. Complaint by G-Sight Solutions, LLC against Ryan James McMillin, G-Sight Solutions, Inc., a California Corporation.

Docket 1

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Court will adopt the *Preliminary Findings and Conclusions* set forth in the Order to Show Cause.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiffs to Appear and Show Cause Why the Complaint Should Not Be Dismissed as to Defendant G-Sight Solutions, Inc., for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 19] (the "Order to Show Cause")
- 2) Plaintiff's Response to Order to Show Cause [Doc. No. 24]
- 3) Notice of Voluntary Dismissal of Defendant G-Sight Solutions, Inc. [Doc. No. 25]

I. Facts and Summary of Pleadings

In this dischargeability action, Plaintiffs have named as defendants the Debtor, Ryan J. McMillin, as well as G-Sight Solutions, Inc. ("G-Sight"), an entity that the Debtor allegedly used to perpetuate a scheme to interfere with Plaintiffs' business by diverting customers. The Complaint seeks a determination that the Debtor's indebtedness to Plaintiffs is non-dischargeable pursuant to § 523(a)(2)(A), (a)(4), and (a)(6). The prayer does not seek any relief against G-Sight. G-Sight has not responded to the Complaint.

On August 19, 2019, the Court entered an *Order Requiring Plaintiffs to Appear and Show Cause Why the Complaint Should Not Be Dismissed as to Defendant G-Sight Solutions, Inc., for Failure to State a Claim Upon Which Relief Can Be Granted* [Doc. No. 19] (the "Order to Show Cause"). The Order to Show Cause required Plaintiffs to respond to the Court's *Preliminary Findings and Conclusions* (the

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"Preliminary Findings"). Specifically, the Court found that the Complaint failed to state a claim upon which relief can be granted as to G-Sight, since § 523 does not permit the Court to enter relief against a non-debtor such as G-Sight.

Plaintiffs do not object to the dismissal of G-Sight, provided that the dismissal is without prejudice to Plaintiffs' ability to file an amended complaint naming G-Sight as a defendant. Plaintiffs further request that the Court specify that the dismissal does not prejudice their ability to maintain a case against G-Sight pending in the Los Angeles Superior Court. On September 13, 2019, Plaintiffs filed a notice of voluntary dismissal of G-Sight.

II. Findings and Conclusions

A. The Court Adopts the Preliminary Findings

The Preliminary Findings set forth in the Order to Show Cause are adopted as the findings of the Court and are incorporated herein by reference. The dismissal is without prejudice to Plaintiffs' ability to file an amended complaint naming G-Sight as a defendant. This Court cannot opine on what effect, if any, that the dismissal will have on Plaintiff's ability to maintain an action against G-Sight in the Los Angeles Superior Court (the "State Court Action"); however, it is not the Court's intent that the dismissal interfere with Plaintiff's ability to prosecute the State Court Action.

B. Litigation Deadlines

Having reviewed the Joint Status Report submitted by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the

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Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not

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Ryan James McMillin

Chapter 7

granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii), and shall be filed by the deadline specified in ¶(2)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order and an order in connection with the Order to Show Cause. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Ryan James McMillin

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Party Information

Debtor(s):

Ryan James McMillin

Represented By
John A Harbin

Defendant(s):

Ryan James McMillin

Pro Se

G-Sight Solutions, Inc., a California

Pro Se

Plaintiff(s):

Elite Optoelectronics Co., Ltd a

Pro Se

G-Sight Solutions, LLC, a California

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:19-14528 Allen Joseph MacQuarrie

Chapter 7

#3.00 Order to Show Cause to Appear why (1) The complaint should not be dismissed as to the non-Debtor Defendants and why (2) The court should not Sua Sponte lift the automatic stay to allow te Plaintiffs to prosecute the State Court action to final judgment.

Docket 0

Tentative Ruling:

9/23/2019

See Cal. No. 4, below, incorporated in full by reference.

Party Information

Debtor(s):

Allen Joseph MacQuarrie

Represented By
Shawn P Huston

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:19-14528 Allen Joseph MacQuarrie

Chapter 7

Adv#: 2:19-01144 Borish et al v. Tabingo et al

- #4.00** Order to Show Cause to Appear why (1) The complaint should not be dismissed as to the non-Debtor Defendants and why (2) The court should not Sua Sponte lift the automatic stay to allow te Plaintiffs to prosecute the State Court action to final judgment.

Docket 13

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Court will (1) dismiss the Complaint as to the Non-Debtor Defendants for failure to state a claim upon which relief can be granted, (2) lift the automatic stay to permit Plaintiffs to prosecute the State Court Action to final judgment, and (3) conduct a Status Conference on **January 14, 2020, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiffs to Appear and Show Cause Why (1) the Complaint Should Not Be Dismissed as to the Non-Debtor Defendants and Why (2) the Court Should Not *Sua Sponte* Lift the Automatic Stay to Allow the Plaintiffs to Prosecute the State Court Action to Final Judgment [Doc. No. 15] (the "Order to Show Cause")
- 2) Defendant's, Allen Joseph MacQuarrie, Response to Court's Preliminary Findings and Conclusions Regarding Objection to the Dischargeability of Debt Under 11 U.S.C. § 523(a)(2)(A) (Fraud and False Pretenses) [Doc. No. 23]
- 3) Opposition to Defendant/Debtor MacQuarrie's Response—Why the Court *Should* Sua Sponte Lift the Automatic Stay to Permit Plaintiffs to Prosecute the State Court Action to Final Judgment [Doc. No. 24]
- 4) Defendant's, Allen Joseph MacQuarrie, Response to Plaintiffs Opposition—Why the Court Should Not Lift the Automatic Stay to Permit Plaintiffs to Prosecute the State Court Action to Final Judgment [Doc. No. 25]

I. Facts and Summary of Pleadings

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CONT... **Allen Joseph MacQuarrie**

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In this dischargeability action (the "Dischargeability Action"), Plaintiffs have named as defendants the Debtor, Allan J. Macquarrie, as well as Celgine Tabingo, Clarke Miller, KarmaBox Vending, and MyKarmabox.com (collectively, the "Non-Debtor Defendants"). The Complaint seeks a determination that the Debtor's indebtedness to Plaintiffs is non-dischargeable pursuant to § 523(a)(2)(A). The Complaint alleges that the Non-Debtor Defendants participated with the Debtor in the conduct giving rise to the indebtedness alleged to be non-dischargeable. Prior to the Debtor's bankruptcy filing, Plaintiffs commenced an action in the State Court seeking to establish the indebtedness alleged to be non-dischargeable (the "State Court Action").

On August 19, 2019, the Court entered an *Order Requiring Plaintiffs to Appear and Show Cause Why (1) the Complaint Should Not Be Dismissed as to the Non-Debtor Defendants and Why (2) the Court Should Not Sua Sponte Lift the Automatic Stay to Allow the Plaintiffs to Prosecute the State Court Action to Final Judgment* [Doc. No. 15] (the "Order to Show Cause"). The Order to Show Cause required the parties to respond to the Court's *Preliminary Findings and Conclusions* (the "Preliminary Findings"). Specifically, the Court found that the Complaint failed to state a claim upon which relief could be granted as to the Non-Debtor Defendants, because § 523 enables a creditor to obtain a judgment that certain indebtedness of a debtor should be excepted from the debtor's discharge, but does not permit the Court to enter relief against non-debtor parties. The Court further found that the most efficient way to resolve the Dischargeability Action was for Plaintiffs to first prosecute the State Court Action to final judgment. Provided Plaintiffs obtained a judgment in their favor, Plaintiffs could then return to the Bankruptcy Court to obtain a determination regarding with such judgment is dischargeable. The Court noted that the State Court was better equipped to determine the State Court Action's claims for breach of contract, intentional misrepresentation, negligent misrepresentation, fraud, malice, constructive fraud, breach of fiduciary duty, conversion, accounting, unjust enrichment, unfair business practices, fraudulent concealment, gross negligence, return of property, and intentional infliction of emotional distress.

Neither Plaintiffs or the Debtor opposes dismissal of the Complaint as to the Non-Debtor Defendants. The Debtor opposes the lifting of the automatic stay to allow the State Court Action to proceed. The Debtor states that he is in default in the State Court Action and cannot afford to defend himself against the State Court Action. The Debtor argues that the action can be tried more cost-effectively in the Bankruptcy Court.

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Plaintiffs support the lifting of the automatic stay to allow the State Court Action to proceed to final judgment. In his reply to the Plaintiffs' briefing, the Debtor again emphasizes the prejudice he would suffer as a result of being required to defend the State Court Action as a result of his lack of funds.

II. Findings and Conclusions

As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether the Defendant is indebted to the Plaintiff; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001). Here, the Dischargeability Action alleges that the indebtedness which Plaintiff had sought to establish by way of the State Court Action should be excepted from Debtor/Defendant's discharge pursuant to 11 U.S.C. §§523(a)(2)(A).

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions

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- only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
 - 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
 - 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
 - 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
 - 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
 - 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The State Court Action asserts claims for breach of contract, intentional misrepresentation, negligent misrepresentation, fraud, malice, constructive fraud, breach of fiduciary duty, conversion, accounting, unjust enrichment, unfair business practices, fraudulent concealment, gross negligence, return of property, and intentional infliction of emotional distress.

Here, the most salient considerations are *Curtis* factors four (the State Court's expertise to adjudicate the claims asserted in the State Court Action) and ten (the interests of judicial economy). Both factors weigh in favor of lifting the automatic stay to allow the State Court Action to proceed to final judgment. The State Court Action asserts multiple state law claims, all of which require the application of substantive non-bankruptcy law. The State Court, rather than the Bankruptcy Court, is best equipped to decide these issues. Judicial economy is best served by allowing the State Court to adjudicate the issues arising solely under state law, with the Bankruptcy Court then adjudicating the dischargeability issues arising solely under Bankruptcy Law. In the event that Plaintiffs obtain final judgment in their favor in the State Court Action, Plaintiffs may then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is non-dischargeable.

Debtor argues that he would be prejudiced by the lifting of the automatic stay because he would incur significant costs in attempting to set aside the default entered against him in the State Court Action. The fact that Debtor permitted a default to be entered against him in the State Court Action is not cause to decline to lift the automatic stay. Debtor is not entitled to be shielded from the consequences of failing

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to defend against the State Court Action simply because he has sought bankruptcy protection.

The litigation deadlines previously set by the Court are VACATED. A continued Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the State Court Action, shall be submitted by no later than fourteen days prior to the hearing.

Neither party opposes dismissal of the Non-Debtor Defendants. The Court will dismiss the Non-Debtor Defendants, based upon its finding that the Complaint fails to state a claim against the Non-Debtor Defendants upon which relief can be granted.

III. Conclusion

Based upon the foregoing, the Court will (1) dismiss the Complaint as to the Non-Debtor Defendants for failure to state a claim upon which relief can be granted, (2) lift the automatic stay to permit Plaintiffs to prosecute the State Court Action to final judgment, and (3) conduct a Status Conference on **January 14, 2020, at 10:00 a.m.**

The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Allen Joseph MacQuarrie

Represented By
Shawn P Huston

Defendant(s):

Celgine Tabingo

Pro Se

Clarke Miller

Pro Se

KarmaBox Vending

Pro Se

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Chapter 7

MyKarmabox.com Pro Se

Urban Vendor, Inc Pro Se

Does 1 Through 20, Inclusive Pro Se

Allan J Macquarrie Pro Se

Plaintiff(s):

Stephen Borish Represented By
Roxanne Bonar

Ami Borish Represented By
Roxanne Bonar

Trustee(s):

Timothy Yoo (TR) Pro Se

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Adv#: 2:19-01144 Borish et al v. Tabingo et al

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01144. Complaint by Stephen & Ami Borish against Allen Joseph MacQuarrie. (d),(e)),(14 (Recovery of money/property - other)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Bonar, Roxanne)

fr: 8-13-19

Docket 1

Tentative Ruling:

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See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Allen Joseph MacQuarrie

Represented By
Shawn P Huston

Defendant(s):

Celgine Tabingo

Pro Se

Clarke Miller

Pro Se

KarmaBox Vending

Pro Se

MyKarmabox.com

Pro Se

Urban Vendor, Inc

Pro Se

Does 1 Through 20, Inclusive

Pro Se

Allan J Macquarrie

Pro Se

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Plaintiff(s):

Stephen Borish Pro Se

Ami Borish Pro Se

Trustee(s):

Timothy Yoo (TR) Pro Se

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Hearing Room 1568

10:00 AM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#6.00 Hearing
RE: [133] Motion for order confirming chapter 11 plan with Notice of Motion
fr. 8-7-19

Docket 133

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Plan is DENIED without prejudice. The Debtors may modify the Plan in accordance with Section II of this tentative ruling regarding the payment of interest rate to the claimants in Class 2(A), if the Debtors can afford the payments occasioned by the increase.

Pleadings Filed and Reviewed

1. Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 102] (the "Disclosure Statement")
2. Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan")
3. Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 73]
4. Order Granting Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 82]
5. Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 107] (the "JPMorgan Stipulation")
6. Order on Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 109] (the "Order on JPMorgan Stipulation")

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7. Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization [Doc. No. 120]
8. Notice of Hearing Re: Plan Confirmation and Plan Related Deadlines [Doc. No. 119]
9. Declaration of Peter Garza Regarding Service of the Solicitation Package [Doc. No. 122]
10. Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation")
11. Order Granting Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 138] (the "Order on CSMC 2018-RPL8 Trust Stipulation")
12. Notice of Motion and Motion to Confirm Debtors' Chapter 11 Plan of Reorganization [Doc. No. 133] (the "Confirmation Brief")
13. Plan Ballot Summary [Doc. No. 135].
14. Fifth Interim Report of Patient Care Ombudsman Pursuant to 11 U.S.C. § 333(b) (2) [Doc. No. 139]
15. Tentative Ruling on Debtor's Motion For Order Continuing Chapter 11 Plan (the "Tentative Ruling") [Doc. No. 143]
16. Scheduling Order (the "Scheduling Order") [Doc. No. 144]
17. Brief Amended in Support of Debtors' Motion for Confirmation of Chapter 11 Plan of Reorganization (the "Supplemental Confirmation Brief") [Doc. No. 148]

I. Facts and Summary of Pleadings

Debtors-in-possession, Damu Vusha and Akiba Vusha (the "Debtors"), filed this voluntary Chapter 11 case on February 5, 2018 (the "Petition Date"). The Debtors' primary assets consist of three real properties: (1) their principal residence located at 6122 S. Kings Road, Los Angeles, CA 90056 (the "Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and 1300 W. 69th Street, Los Angeles, CA 90044 (the "69th Street Property"). The Debtors also own and operate a residential care facility called Jatkodd Crisis Intervention Center (the "Business") which provides 24/7 care to four developmentally-disabled individuals. The Business operates out of the Wilton Property and pays the Debtors' monthly rent. The Debtors state that post-petition operations from the Business have been

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profitable. The Debtors also lease out the 69th Street Property for additional monthly income.

On August 7, 2019, the Court held a motion hearing regarding Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan"), which was then continued to September 24, 2019 [see Doc. No. 144.] [Note 1]. Pursuant to the Tentative Ruling, which was incorporated in full by the Scheduling Order, the Court identified issues concerning the showing made by the Debtors that the Plan satisfied § 1129(a)(8) and (a)(11). By September 3, 2019, the Debtors complied with the Court's instructions to submit supplemental briefing addressing the issues described above. Having reviewed the Supplemental Confirmation Brief, the Court finds it appropriate to DENY the Plan's confirmation without prejudice.

Summary of the Plan

Administrative Claims

The Debtors anticipate having the following administrative claims as of the Effective Date:

- i. Law Offices of Michael Jay Berger ("Debtors' Counsel"): \$15,000
- ii. Jennifer Min Liu ("Debtors' Accountant"): \$2,000
- iii. Tamar Terzian (the "Patient Care Ombudsman"): \$1,200

The Debtors propose to pay the foregoing administrative claims in full, once approved by the Court.

Priority Tax Claims

The Debtors propose to pay the priority tax claims of the Internal Revenue Service (\$52,185.95) and Franchise Tax Board (\$14,419) the present value of their claims in full within five years of the petition date in accordance with § 507(a)(8) by making equal monthly installments in the amounts set forth in Exhibit C of the Disclosure Statement.

Class 1(A) – Secured Claim of U.S. Bank, National Association – Accepts the Plan

Class 1(A) consists of the secured claim of U.S. Bank, National Association ("US Bank"). US Bank holds a first-priority lien against the Principal Residence, which secures debt in the amount of \$609,000.

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On October 25, 2018, the Debtors filed a *Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N.A. and US Bank National Association* [Doc. No. 73] (the "Plan Treatment Stipulation"), which the Court approved by order entered December 6, 2018 [Doc. No. 82]. Pursuant to the Plan Treatment Stipulation, the Debtors propose to pay US Bank's claim in full over 228 months with 3% interest by making monthly payments of \$3,507.48. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$580.97.

US Bank's claim is impaired and, pursuant to the Plan Treatment Stipulation, it is deemed to accept the Plan.

Class 1(B) – Secured Claim of J.P Morgan Acquisition Corp. – Accepts the Plan

Class 1(B) consists of the secured claim of J.P. Morgan Acquisition Corp. ("JP Morgan"). JP Morgan holds a first-priority lien against the Wilton Property, which secures debt in the amount of \$310,833.69 and \$4,078.86 in pre-petition arrears.

On March 12, 2019, JP Morgan filed a *Stipulation Re: Adequate Protection and Treatment of Creditors' Claim Under Debtors' Chapter 11 Plan of Reorganization* [Doc. No. 95] (the "JP Morgan Stipulation"), which the Court approved by order entered on the same date [Doc. No. 98]. Pursuant to the JP Morgan Stipulation, the Debtors propose to pay JP Morgan's claim in full with 5.125% interest by making monthly payments of \$1,563.92. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$321.56. Finally, the Debtors propose to cure the pre-petition arrears by making six equal monthly installment payments of \$784.33 beginning the first month following confirmation of the Plan.

JP Morgan's claim is impaired, and it voted to accept the Plan.

Class 1(C) – Secured Claim of CSMC 2018-RPL8 Trust – Accepts the Plan

Class 1(C) consists of the secured claim of CSMC 2018-RPL8 Trust ("CSMC"). CSMC holds a first-priority lien against the 69th Street Property, which secures debt in the amount of \$277,258.87 and \$4,723.57 in pre-petition arrears.

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On July 3, 2019, the Debtors filed a *Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535* [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation"), which the Court by order entered on July 24, 2019 [Doc. No. 138]. Pursuant to the CSMC 2018-RPL8 Trust Stipulation, the Debtors propose to pay CSMC's claim in full with 3.25% interest by making monthly payments of \$1,060.60. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of approximately \$341.13. Finally, the Debtors propose to make additional monthly payments of \$78.73 for sixty months to cure pre-petition arrears. **[Note 2]**

CSMC's claim is impaired, and it voted to accept the Plan.

Class 1(D) – Secured Claim of Santander Consumer USA – Deemed to Reject

Class 1(D) consists of the secured claim of Santander Consumer USA ("Santander"). Santander holds a secured lien against the Debtors' 2004 Toyota Sienna, securing debt in the amount of \$3,622.13 and \$1,186.19 in pre-petition arrears. As of April 5, 2019, the outstanding balance of this claim is \$2,561.29. The Debtors propose to pay Santander's claim in full pursuant to the terms of the original Vehicle Loan Agreement, by making monthly payments of \$417.73 until the claim is satisfied.

Santander's claim is impaired, and it did not cast a ballot. Therefore, Class 1(D) is deemed to reject the Plan.

Class 1(E) – Secured Claim of the Internal Revenue Service – Deemed to Reject

Class 1(E) consists of the secured claim of the Internal Revenue Service (the "IRS"). The IRS holds a blanket security lien against the Debtors' assets, securing debt in the amount of \$40,222.59. The Debtors propose to pay the IRS's claim in full by making monthly payments of \$759.60 for sixty months, with the applicable IRS interest rate of 5%. **[Note 3]**

The IRS's claim is impaired, and it did not cast a ballot. Therefore, Class 1(E) is deemed to reject the Plan.

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Class 2(A) – General Unsecured Claims – Deemed to Reject

Class 2(A) consists of general unsecured claims ("GUC") totaling \$69,958.51. The Debtors propose to pay 100% of all claims in Class 2(A), with the federal funds interest rate of 2.25%, over a period of five years by making monthly payments of \$1,165.98 beginning on the first day of the month following the Effective Date. [Note 4]

Claims in this class are impaired and entitled to vote on the Plan. No votes were received. Therefore, Class 2(A) is deemed to reject the Plan.

Class 2(B) – Unsecured Claim of U.S. Department of Education – Deemed to Reject

Class 2(B) consists of the unsecured claim of the U.S. Department of Education c/o FedLoan Servicing ("U.S. Dept. of Educ.") for Debtors' student loans totaling \$45,883.05 (the "Student Loans"). The Debtors propose to pay their Student Loans in full over a period of 18 years in accordance with the current terms of repayment. The Debtors state that they are on an "income-based" repayment plan and are not making any payments. Debtors propose to begin making payments of \$212.42 per month beginning on the first day of the month following the Effective Date. [Note 5]

Class 2(B) is impaired, and U.S. Dept. of Educ. did not cast a ballot. Therefore, Class 2(B) is deemed to reject the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan does not comply with all applicable provisions of § 1129. Specifically, the Plan does not pay general unsecured creditors the total present amount of their claims, thereby failing to satisfy § 1129(b)(2)(B).

A. The Plan Fails to Comply With All Applicable Provisions of 11 U.S.C. § 1129

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that

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the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a). The Plan contains five classes of secured creditors, a class of general unsecured creditors, and a class comprised of the unsecured claim of the U.S. Department of Education for the Debtors' student loans.

As to the discrimination of unsecured creditors, the Court recognizes that there is split between courts prohibiting the discrimination of unsecured debt in favor of long-term nondischargeable unsecured debt. *See In re Sutton*, No. 10-10539-8-RDD, 2012 WL 433480, at *3 (Bankr. E.D.N.C. Feb. 9, 2012) (discussing the jurisdictional split regarding separate classification of student loans). Courts allowing for such discrimination reason that: "1) the debtor will not be afforded a fresh start if the student loan is not separated from other general unsecured claims; 2) strong public policy exists for repayment of educational loans; 3) Congress prefers reorganization over liquidation; and 4) unsecured creditors are not harmed by favorable treatment because distribution must be equivalent to liquidation under Chapter 7." *See at* *4. Here, the Debtors' separate classification is consistent with the reasons referenced in *In re Sutton*. First, separate classification of the U.S. Department of Education's educational loan is permissible because the long-term student loan debt is nondischargeable pursuant to § 523(a)(8) and is distinctly different from the remaining general unsecured claims. Second, the separate classification would not result in any unfair discrimination against either class of unsecured creditors in violation of § 1129(b)(1) because the Plan proposes to pay 100% of both classes of claims, assuming that the Debtors amend their plan to pay a suitable interest rate to the claimants in Class 2(A). Third, any discrepancy in interest rates paid out to either class of unsecured creditors is the result of the longer repayment term to Class 2(B)

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pursuant to the individual student loan agreements.

Therefore, to the extent that Debtors modify the Plan as discussed below, the Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

The Plan appropriately designates classes of claims and interests. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that all classes are impaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment of all impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each

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claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by income from the Business, the Debtors' monthly Social Security Income, rental income from the 69th Street Property and the Wilton Property, and a \$2,500 monthly contribution from one of the Debtor's mother.

As demonstrated by Debtors' projected income and expenses for the next five years [Doc. No. 148], these funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Debtors are individuals. Section 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Debtors are individuals. Section 1123(a)(7) does not apply.

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10. Section 1123(a)(8)

Section 1123(a)(8) was added to the Bankruptcy Code to provide that, to be confirmable, an individual debtor's plan must provide for the payment to creditors of all or such portion of earnings from personal services or other future income of the debtor. The Plan provides for the payment of a portion of the Debtors' future income to creditors. The Plan satisfies § 1123(a)(8).

11. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required in a plan of reorganization. The Plan appropriately implements many of § 1123(b)'s optional provisions. For example, the Plan impairs all classes pursuant to § 1123(b)(1); provides for the assumption of executory contracts and unexpired leases pursuant to § 1123(b)(2); provides for the settlement or adjustment of claims pursuant to § 1123(b)(3)(A) and designates the Debtors as the representatives of the estate to enforce any claims or causes of actions belonging to the estate pursuant to § 1123(b)(3)(B); and modifies the rights of holders of claims pursuant to § 1123(b)(5). In sum, the Plan complies with § 1123(b).

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Debtors have:

- 1) Complied with the Bankruptcy Code's provisions with respect to the use of cash collateral (*see Order Re: Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral* [Doc. Nos. 23, 43]);
- 2) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization* [Doc. No. 120]);
- 3) Obtained Court approval of the employment of professional persons (*see* Doc. Nos. 32, 35, 38, 45 and 63); and
- 4) Filed monthly operating reports.

Accordingly, the Debtors have satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

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Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Debtors have complied with the requirements of the Code throughout this case. Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith because no party has objected to confirmation. The Plan satisfies § 1129(a)(3).

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides for Court approval of all professional fees. *See* Plan at II.a.1.i. The Plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

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The Debtors are individuals. Section 1129(a)(5) does not apply.

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1(A), 1(B), and 1(C) have accepted the Plan. Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. Through the Plan, the Debtors propose to pay all claims in full. Accordingly, all classes have either accepted the Plan or will receive treatment that is no less favorable than they would receive under Chapter 7. The Plan satisfies § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. Impaired Classes 1(A), 1(B), and 1(C) have accepted the Plan. Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. *See In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (To accept a Plan, members of a class must affirmatively vote in favor of the Plan). Accordingly, the Plan does not satisfy § 1129(a)(8) and must, therefore, satisfy § 1129(b) [discussed below].

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

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The Plan provides for the payment of all outstanding allowed administrative claims in full as soon as the fees are approved by the Court and none of the professionals have requested a different payment arrangement. The Plan also provides for payment of priority tax claims in a manner consistent with § 1129(a)(9)(C)(ii). The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Classes 1(A), 1(B), and 1(C) consist of non-insider claims, are impaired, and have voted to accept the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtors submit that they have sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon a review of the budget projections included as Exhibit C to the Disclosure Statement (which was updated on Exhibit C to the Supplemental Confirmation Brief), and the Declaration of Anna Joyce Giles attached as Exhibit 1 to the Confirmation Brief, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization.

The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. To the extent any fees are outstanding, the Plan provides that all such fees will be paid by the Effective Date.

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Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the Plan. Section 1129(a)(15) does not apply because no objections to the Plan are on file.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, applies. Pursuant to § 1129(b)(1), a plan may be confirmed where not all impaired classes vote to accept the plan, provided that "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." With respect to a class of secured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim

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deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A).

Under the Plan, Classes 1(D) and 1(E) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these classes. In this case, Debtors propose to pay Class 1(D) 100% of the outstanding claim balance at an interest rate of 25.49%, which was set pursuant to the vehicle purchase agreement. *See* Exhibit B of the Supplemental Confirmation Brief. Comparably, the Debtors propose to pay Class 1(E) 100% of its claim with the applicable interest rate of 5% set by the Internal Revenue Service. *See* I.R.S. Rev. Rul. 2019-15. Given that the Plan provides that Classes 1(D) and 1(E) will receive the total amount of their claims, with an appropriate interest rate, these claimants will receive the present value of their claims as of the Effective Date. The Court accordingly finds that the proposed treatment of Classes 1(D) and 1(E) is consistent with § 1129(b)(2)(A)(i)(II).

In sum, the "fair and equitable" requirement set forth in § 1129(b)(2) is satisfied with respect to Classes 1(D) and 1(E).

With respect to a class of unsecured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under

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section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. § 1129(b)(2)(B).

Under the Plan, Classes 2(A) and 2(B) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these classes.

As to Class 2(A), Debtors propose to pay general unsecured creditors (the "GUC") 100% of their claims, at the current federal interest rate of 2.25%. Payment to these creditors at the proposed interest rate is insufficient. The Plan does not satisfy § 1129(b)(2)(B)(i) as discussed below.

The subject of calculating appropriate interest rates payable by debtors invoking the cram down option was taken up by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); *First S. Nat'l Bank v. Sunnyslope Hous. L.P. (In re Sunnyslope Hous. L.P.)*, 859 F.3d 637, 646 (9th Cir. 2017) (applying the "*Till* test" to ensure that a creditor received the present value of its claim through payments proposed in a Chapter 11 plan). In *Till*, following a consideration of several calculation formulas, the Court endorsed the "formula approach," which is determined by first "looking to the national prime rate, reported daily in the press," and by then "adjust[ing] the prime rate accordingly." *Till*, 541 U.S. at 478–479. The bankruptcy court is authorized to adjust the base interest rate by considering risk factors such as "the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479.

As authorized by *Till*, the Court finds that Debtors have failed to give the GUC the total value of their claims by proposing to pay such claims an insufficient rate of interest, i.e., the federal interest rate of 2.25%. Moreover, by only offering an interest rate of 2.25%, Debtors wholly fail to account for any risk of non-payment absorbed by the GUC. Therefore, the Plan runs afoul the Court's considerations in *Till*, and thereby fails to satisfy § 1129(b)(2)(B)(i). Based on the findings set forth in *Till*, the Court determines that to receive the present value of their claims, the GUC must be paid with an interest rate of at least 6%, consisting of the federal prime rate of 5%, plus an addition of one hundred (100) basis points to account for the risk absorbed by creditors [Note 6]. An upward adjustment of one hundred basis points is fair to both

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the GUC—who must wait to be fully paid over the next sixty months—and the Debtors—whose income projections indicate that the Plan’s feasibility will not be compromised. Therefore, to the extent that Class 2(A) claimants were to be paid with at least an interest rate of 6%, the Plan would be in a better position to meet the requirements under § 1129(b)(2)(B)(i) with respect to this class.

Accordingly, the Court would be amenable to the Plan’s modification by Debtors to ensure that the GUC are paid with a suitable rate of interest. When a modification does not "materially" impact or affect the rights of any affected creditors, a court may deem that prior acceptances apply to the amended plan, and Fed. R. Bankr. P. 3019 would not mandate new disclosures or re-solicitation of votes. *See In re American Solar King Corp.*, 90 B.R. 808, 825–26 (Bankr. W. D. Tex. 1988) (determining that the proposed modification was not material and previously-accepting creditors were deemed to accept modified plan). Here, it is determined that such a modification would not materially impact or affect the rights of the GUC, who stand to receive an increased amount of recovery on the original payment schedule proposed by the Debtors. The Debtors may amend the Plan to provide a sufficient rate of interest to the GUC.

Separately, Debtors propose to pay Class 2(B), consisting of unsecured student loans, in full at the interest rate fixed by Debtors’ individual student loan agreements. As the claimant in Class 2(B) is entitled to receive the total amount of its claim, with an appropriate rate of interest, the Court finds that the treatment of Class 2(B) under the Plan is consistent with § 1129(b)(2)(B)(i). Notwithstanding the Debtors’ proposed payment schedule of claims in Class 2(B), this tentative ruling will not alter or affect any terms or provisions on the Debtors’ respective student loan agreements.

Finally, to the extent that the Plan’s treatment of Classes 2(A) and 2(B) meets § 1129(b)(2)(B)(i), the requirements of absolute priority are not triggered.

Therefore, provided that the Plan complies with the findings set forth above, the "fair and equitable" requirement provided in § 1129(b)(2) will be satisfied with respect to Classes 2(A) and 2(B).

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a

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particular case, is satisfied.

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SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

Post-Confirmation Status Conference

A Post-Confirmation Status Conference shall be held on **January 22, 2020, at 10:00 a.m.** A Post-Confirmation Status Report shall be filed by no later than fourteen days prior to the hearing.

III. Conclusion

For the reasons set forth above, the Plan is DENIED without prejudice. The Debtors may modify the Plan in accordance with Section II of this tentative ruling regarding the payment of interest rate to the claimants in Class 2(A). The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As modified by the Court approved stipulations between the Debtors and US Bank [Doc. Nos. 73, 82], JP Morgan [Doc. Nos. 95, 98], and CSMC [Doc. Nos. 130,

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Note 2: In addition to proposed arrearage payments, the Court notes that pursuant to the CSMC 2018-RPL8 Trust Stipulation, Debtors agreed to make a one-time payment of \$1,367.15 to CSMC to cure arrears through June 1, 2019 [*see* Doc. No. 130-2].

Note 3: *See* I.R.S. Rev. Rul. 2019-15.

Note 4: This tentative ruling reflects updated claim figures and new proposed treatment for Class 2(A), as represented on Debtors' Supplemental Confirmation Brief.

Note 5: This tentative ruling reflects updated claim figures and new proposed treatment for Class 2(B), as represented on Debtors' Supplemental Confirmation Brief.

Note 6: As of the preparation of this tentative ruling, the prime interest rate was 5%. *See* Board of Governors of the Federal Reserve System, Federal Reserve Press Release (September 18, 2019), <https://www.federalreserve.gov/monetarypolicy/files/monetary20190918a1.pdf>.

8/6/2019

For the reasons set forth below, CONTINUE HEARING to **September 24, 2019** at **10:00 a.m.**

Pleadings Filed and Reviewed

18. Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 102] (the "Disclosure Statement")

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19. Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan")
20. Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 73]
21. Order Granting Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 82]
22. Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 107] (the "JPMorgan Stipulation")
23. Order on Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 109] (the "Order on JPMorgan Stipulation")
24. Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization [Doc. No. 120]
25. Notice of Hearing Re: Plan Confirmation and Plan Related Deadlines [Doc. No. 119]
26. Declaration of Peter Garza Regarding Service of the Solicitation Package [Doc. No. 122]
27. Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation")
28. Order Granting Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 138] (the "Order on CSMC 2018-RPL8 Trust Stipulation")
29. Notice of Motion and Motion to Confirm Debtors' Chapter 11 Plan of Reorganization [Doc. No. 133] (the "Confirmation Brief")
30. Plan Ballot Summary [Doc. No. 135]

I. Facts and Summary of Pleadings

Debtors-in-possession, Damu Vusha and Akiba Vusha (the "Debtors"), filed this voluntary Chapter 11 case on February 5, 2018 (the "Petition Date"). The Debtors' primary assets consist of three real properties: (1) their principal residence located at 6122 S. Kings Road, Los Angeles, CA 90056 (the "Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and 1300 W. 69th

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Street, Los Angeles, CA 90044 (the "69th Street Property"). The Debtors also own and operate a residential care facility called Jatkodd Crisis Intervention Center (the "Business") which provides 24/7 care to four developmentally disabled individuals. The Business operates out of the Wilton Property and pays the Debtors monthly rent. The Debtors state that post-petition operations from the Business have been profitable. The Debtors also lease out the 69th Street Property for additional monthly income.

The Debtors now seek confirmation of their Chapter 11 Plan of Reorganization [Doc. No. 103] (the "Plan"). **[Note 1]**

Summary of the Plan

Administrative Claims

The Debtors anticipate having the following administrative claims as of the Effective Date:

- i. Law Offices of Michael Jay Berger ("Debtors' Counsel"): \$15,000
- ii. Jennifer Min Liu ("Debtors' Accountant"): \$2,000
- iii. Tamar Terzian (the "Patient Care Ombudsman"): \$1,200

The Debtors propose to pay the foregoing administrative claims in full, once approved by the Court.

Priority Tax Claims

The Debtors propose to pay the priority tax claims of the Internal Revenue Service (\$52,185.95) and Franchise Tax Board (\$14,419) the present value of their claims in full within five years of the petition date in accordance with § 507(a)(8) by making equal monthly installments in the amounts set forth in Exhibit C of the Disclosure Statement.

Class 1(A) – Secured Claim of U.S. Bank, National Association – Accepts the Plan

Class 1(A) consists of the secured claim of U.S. Bank, National Association ("US Bank"). US Bank holds a first-priority lien against the Principal Residence, which secures debt in the amount of \$609,000.

On October 25, 2018, the Debtors filed a *Motion Under LBR 9019 to Approve*

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Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N.A. and US Bank National Association [Doc. No. 73] (the "Plan Treatment Stipulation"), which the Court approved by order entered December 6, 2018 [Doc. No. 82]. Pursuant to the Plan Treatment Stipulation the Debtors propose to pay US Bank's claim in full over 228 months with 3% interest by making monthly payments of \$3,507.48. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$580.97.

US Bank's claim is impaired and, pursuant to the Plan Treatment Stipulation, it is deemed to accept the Plan.

Class 1(B) – Secured Claim of J.P. Morgan Acquisition Corp. – Accepts the Plan

Class 1(B) consists of the secured claim of J.P. Morgan Acquisition Corp. ("JP Morgan"). JP Morgan holds a first-priority lien against the Wilton Property, which secures debt in the amount of \$310,833.69 and \$4,078.86 in pre-petition arrears.

On March 12, 2019, JP Morgan filed a *Stipulation Re: Adequate Protection and Treatment of Creditors' Claim Under Debtors' Chapter 11 Plan of Reorganization* [Doc. No. 95] (the "JP Morgan Stipulation"), which the Court approved by order entered on the same date [Doc. No. 98]. Pursuant to the JP Morgan Stipulation, the Debtors propose to JP Morgan's claim in full with 5.125% interest by making monthly payments of \$1,563. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$321.56. Finally, the Debtors propose to cure the pre-petition arrears by making six equal monthly installment payments of \$784.33 beginning the first month following confirmation of the Plan.

JP Morgan's claim is impaired, and it voted to accept the Plan.

Class 1(C) – Secured Claim of CSMC 2018-RPL8 Trust – Accepts the Plan

Class 1(C) consists of the secured claim of CSMC 2018-RPL8 Trust ("CSMC"). CSMC holds a first-priority lien against the 69th Street Property, which secures debt in the amount of \$277,258.87 and \$4,723.57 in pre-petition arrears.

On July 3, 2019, the Debtors filed a *Motion to Approve Stipulation for Plan*

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Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation"), which the Court by order entered on July 24, 2019 [Doc. No. 138]. Pursuant to the CSMC 2018-RPL8 Trust Stipulation, the Debtors propose to pay CSMC's claim in full with 3.25% interest by making monthly payments of \$1,060.60. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of approximately \$308.54. Finally, the Debtors agreed to make a one-time payment of \$1,367.15 to CSMC to cure arrears through June 1, 2019.

CSMC's claim is impaired, and it voted to accept the Plan.

Class 1(D) – Secured Claim of Santander Consumer USA – Deemed to Reject

Class 1(D) consists of the secured claim of Santander Consumer USA ("Santander"). Santander holds a secured lien against the Debtors' 2004 Toyota Sienna, securing debt in the amount of \$3,622.13 and \$2,561.29 in pre-petition arrears. The Debtors propose to pay Santander's claim in full pursuant to the terms of the original Vehicle Loan Agreement, by making monthly payments of \$417.73 until the claim is satisfied.

Santander's claim is impaired, and it did not cast a ballot. Therefore, Class 1(D) is deemed to reject the Plan.

Class 1(E) – Secured Claim of the Internal Revenue Service – Deemed to Reject

Class 1(E) consists of the secured claim of the Internal Revenue Service (the "IRS"). The IRS holds a blanket security lien against the Debtors' assets, securing debt in the amount of \$40,222.59. The Debtors propose to pay the IRS's claim in full by making monthly payments of \$759.60 for sixty months.

The IRS's claim is impaired, and it did not cast a ballot. Therefore, Class 1(E) is deemed to reject the Plan.

Class 2(A) – General Unsecured Claims – Deemed to Reject

Class 2(A) consists of general unsecured claims ("GUC") totaling \$65,608.32. The Debtors propose to pay 100% of all claims in Class 2(A) over a period of five years by making monthly payments of \$1,093.46 beginning on the first day of the

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month following the Effective Date.

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Claims in this class are impaired and entitled to vote on the Plan. No votes were received. Therefore, Class 2(A) is deemed to reject the Plan.

Class 2(B) – Unsecured Claim of U.S. Department of Education – Deemed to Reject

Class 2(B) consists of the unsecured claim of the U.S. Department of Education c/o FedLoan Servicing ("U.S. Dept. of Educ.") for Debtors' student loans totaling \$46,383.05 (the "Student Loans"). The Debtors propose to pay their Student Loans in full over a period of 18 years in accordance with the current terms of repayment. The Debtors state that they are on an "income-based" repayment plan and are not making any payments. Debtors propose to begin making payments of \$214.73 per month beginning on the first day of the month following the Effective Date.

Class 2(B) is impaired, and U.S. Dept. of Educ. did not cast a ballot. Therefore, Class 2(B) is deemed to reject the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

For the reasons set forth below, the Court will require the Debtors to submit supplemental briefing and evidence in support of plan confirmation.

A. The Debtors Have Not Satisfied § 1129(a)(8) And Have Not Established That The Plan Can Be Crammed Down On All Impaired Classes

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. Impaired Classes 1(A), 1(B), and 1(C) have accepted the Plan. However, Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. *See In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (To accept a Plan, members of a class must affirmatively vote in favor of the Plan). Accordingly, the Plan does not satisfy § 1129(a)(8) and must, therefore, satisfy § 1129(b).

Pursuant to § 1129(b)(1), a plan may be confirmed where not all impaired classes

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vote to accept the plan, provided that "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." With respect to a class of secured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A).

Under the Plan, Classes 1(D) and 1(E) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these classes. However, the Court finds that the Debtors have not carried their burden of proving that § 1129(b)(2)(A)(i)(II) is satisfied because they have not shown that the holders of claims in Classes 1(D) and 1(E) are receiving the present value of their claims as of the effective date since the Plan does not contemplate paying any interest to these classes. Therefore, the Debtors must revise the Plan to address this issue and submit evidence establishing that the proposed interest rates adequately compensate the respective creditors for the risk of receiving payments over time.

Similarly, with respect to a class of unsecured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior

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claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. § 1129(b)(2)(B).

Under the Plan, Classes 2(A) and 2(B) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be also crammed down on these classes and, for the same reasons set forth above, the Debtors have not carried their burden of proving that § 1129(b)(2)(B)(i) is satisfied because they have not proposed to pay Classes 2(A) and 2(B) any interest. The Debtors have also not satisfied § 1129(b)(2)(B)(ii)'s absolute priority rule because under the Plan the Debtors will retain their equity interests in estate assets without providing any new value. Therefore, the Debtors must also revise the Plan to address this issue and submit evidence establishing the adequacy of the proposed interest rates.

B. The Debtors Have Not Established That The Plan Satisfies § 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtors submit that they have sufficient cash on hand to pay the anticipated amounts that are due on the Effective Date and submitted budget projections as Exhibit C to the Disclosure Statement and the Declaration of Anna Joyce Giles as Exhibit 1 to the Confirmation Brief in support of the Plan's feasibility.

However, as set forth above, the Debtors will need to modify the Plan to provide for interest payments to Classes 1(D), 1(E), 2(A) and 2(B), which will also necessitate revised plan projections. Furthermore, the Debtors' projections only contain information for the first twelve months of the Debtors' Plan and do not appear to account for costs of inflation or the potential for any increase in future income. Accordingly, the Court is unable to make an informed decision about the feasibility of the Debtors' Plan.

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Chapter 11

Finally, the Debtors' Plan relies, in part, on future income from the Business, but the Debtors have not submitted any evidence establishing that the net profits from the Business will be adequate to make the proposed Plan payments. This is especially important given that the nature of the Business exposes it to extensive risk and because any significant impact on the profitability of the Business has the potential to sink the Debtors' Plan.

Based on the foregoing, the Court will require the Debtors to submit revised plan projections for a minimum of five years as well as financial projections for the Business for five years.

III. Conclusion

For the reasons set forth above, the hearing is CONTINUED to **September 24, 2019 at 10:00 a.m.** The Debtors are directed to file supplemental briefing addressing the issues identified above by no later than **September 3, 2019**. The deadline to file any opposition to the supplemental briefing is **September 10, 2019**. The deadline for the Debtors to file a reply to any opposition is **September 17, 2019**.

The Debtors are directed to give notice of the continuance and lodge a scheduling order, via the Court's LOU system, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As modified by the Court approved stipulations between the Debtors and US Bank [Doc. Nos. 73, 82], JP Morgan [Doc. Nos. 95, 98], and CSMC [Doc. Nos. 130, 138].

Party Information

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Chapter 11

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:19-19171 Guillermo Luis Calixtro

Chapter 11

#7.00 HearingRE: [17] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 17

Tentative Ruling:

9/23/2019

See Cal. No. 10, below, incorporated in full by reference.

Party Information

Debtor(s):

Guillermo Luis Calixtro

Pro Se

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2:19-19171 Guillermo Luis Calixtro

Chapter 11

#8.00 HearingRE: [24] Motion to Use Cash Collateral/ Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral

Docket 24

Tentative Ruling:

9/23/2019

See Cal. No. 10, below, incorporated in full by reference.

Party Information

Debtor(s):

Guillermo Luis Calixtro

Pro Se

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2:13-12806 Lenore Pride

Chapter 11

#9.00 HearingRE: [222] Motion Notice of Motion and Motion to Enter Discharge

Docket 222

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Debtor Lenore Pride to Enter a Discharge Upon Completion of Plan Payments; Declaration of Lenore Pride [Doc. No. 222] (the "Motion")
- 2) No opposition to the Motion is on file as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Lenore Pride (the "Debtor") filed a voluntary Chapter 11 petition on February 1, 2013. The Court issued an order confirming the Debtor's Chapter 11 plan of reorganization (the "Plan") on August 30, 2013. *See* Order Confirming Debtor's Chapter 11 Plan of Reorganization [Doc. No. 144.] The Plan provided that the Debtor was to make monthly payments to creditors over a 60-month period. On October 27, 2014, an order was issued to administratively close the case. *See* Order Granting in Part, Denying in Part Motion for Entry of Final Decree Closing Debtor's Chapter 11 Case [Doc. No. 212]. On August 7, 2019, Debtor requested and obtained an order reopening the case [Doc. No. 220] to enter a discharge from this Court, which is sought herein. Debtor asserts that she has made all required payments contemplated in the Plan and attaches a declaration to that effect. *See* Pride Decl., ¶ 4. The Debtor submits that the Plan has been completed and therefore requests that the Court enter her discharge.

As of the date of this tentative ruling, there is no opposition to the Motion on file.

II. Findings and Conclusions

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CONT... Lenore Pride

Chapter 11

The Motion is GRANTED in its entirety. Pursuant to the confirmed Plan, the Debtor is entitled to a discharge upon the completion of all payments contemplated by the Plan. The evidence submitted in connection with the Motion establishes that the Debtor has made all payments required under the Plan. Accordingly, the Debtor is entitled to entry of a discharge as provided by the Plan.

Entry of a final decree is appropriate. Under 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

The Court finds that entry of a final decree closing this case is warranted as follows: (i) the order confirming the Plan is now final; (ii) all payments required by the Plan have been made; and (iii) the Plan did not propose for the transfer of any property [**Note 1**]. In sum, the estate has been fully administered.

Based upon the foregoing, the Motion is GRANTED in its entirety. Within seven days of the hearing, the Debtors shall submit a conforming order, incorporating this tentative ruling by reference. Upon entry of the order granting the Motion, the Clerk of the Court is directed to enter an Order of Discharge.

No appearance is required if submitting on the court's tentative ruling. If you

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CONT... Lenore Pride

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intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court further determines that resolution of the adversary proceeding filed on August 27, 2019 will be collateral to the findings and conclusions made herein.

Party Information

Debtor(s):

Lenore Pride

Represented By
Joon M Khang

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2:19-19171 Guillermo Luis Calixtro

Chapter 11

#10.00 Order requiring Debtor to Appear and Show Cause why this case should not be dismissed pursuant to section 1112(B)(1)

Docket 0

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Court will (1) dismiss the case, (2) enter judgment in favor of the United States Trustee for any unpaid quarterly fees, and (3) deny the Cash Collateral Motion as moot.

Pleadings Filed and Reviewed:

- 1) Motion for Authorization to Use Cash Collateral:
 - a) Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 24] (the "Cash Collateral Motion")
 - b) Opposition to Debtor's Motion to Use Cash Collateral; Notice of Security Interest in Rents and Profits; Non-Consent to Use of Cash Collateral [Doc. No. 30]
- 2) Order to Show Cause Re: Dismissal:
 - a) Order Requiring Debtor to Appear and Show Cause Why this Case Should Not Be Dismissed Pursuant to § 1112(b)(1) [Doc. No. 32] (the "Order to Show Cause")
 - b) Debtor's Response to Order to Show Cause [Doc. No. 47]
- 3) United States Trustee's Motion to Dismiss:
 - a) Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 17]
 - i) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 22]

I. Facts and Summary of Pleadings

Guillermo Luis Calixtro (the "Debtor") filed a *pro se* voluntary Chapter 11 petition on August 6, 2019. On September 9, 2019, the Court denied the Debtor's

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CONT... **Guillermo Luis Calixtro**

Chapter 11

motion for relief from the *in rem* provisions of a May 11, 2018 order lifting the automatic stay as to real property located at 19830 East Saddle Ridge Lane, Walnut, CA 91789 (the "Property") that was entered in the Chapter 13 case of the Debtor's spouse. *See* Order Denying Motion for Order Imposing Stay or Continuing the Automatic Stay [Doc. No. 36] (the "Order"). On September 11, 2019, the Court denied the Debtor's motion for reconsideration of the Order. *See* Order Denying Motion for Reconsideration [Doc. No. 39] and Memorandum of Decision Denying Motion for Reconsideration [Doc. No. 38]. On September 13, 2019, the Court denied the Debtor's second motion for reconsideration of the Order. *See* Order Denying Second Motion for Reconsideration with Prejudice [Doc. No. 43].

On September 5, 2019, the Court entered an *Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Pursuant to § 1121(b)(1)* [Doc. No. 32] (the "Order to Show Cause"). The Order to Show Cause contained the Court's *Preliminary Findings and Conclusions* (the "Preliminary Findings") as to why the case should be dismissed. On September 18, 2019, the Debtor filed a declaration stating that he did not dispute the Preliminary Findings and did not oppose dismissal of the case.

Two other motions have been scheduled to be heard concurrently with the hearing on the Order to Show Cause: (1) the motion of the United States Trustee (the "UST") to convert the Debtor's case to Chapter 7, pursuant to § 1112(b), based upon the Debtor's failure to comply with UST reporting requirements (the "UST § 1112(b) Motion") and (2) the Debtor's motion for authorization to use cash collateral (the "Cash Collateral Motion"). The Debtor has not filed any papers in opposition to the UST § 1112(b) Motion. Wilmington Trust, N.A., successor trustee to Citibank, N.A., as Trustee, for the benefit of registered holders of Structured Asset Mortgage Investments II Trust 2007-AR5, Mortgage Pass-Through Certificates, Series 2007-AR5, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. ("SPS"), which holds a security interest in one of the Debtor's parcels of real property, opposes the Cash Collateral Motion, based on the fact that the loan on the property at issue is over 130 months in default.

II. Findings and Conclusions

Section 1112(b) provides that the Court, upon request of a party in interest, "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an

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Chapter 11

examiner is in the best interests of creditors and the estate." Section 1112(b)(4) contains a nonexclusive list of factors that constitute cause for dismissal or conversion. The factors set forth in § 1112(b)(4) "are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *Pioneer Liquidating Corp. v. United States Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009).

The Preliminary Findings set forth in the Order to Show Cause are adopted as the findings of the Court and are incorporated herein by reference. The case is dismissed for the reasons set forth in the Preliminary Findings. As set forth in the Preliminary Findings, dismissal, rather than conversion, is in the best interests of creditors because conversion to Chapter 7 would not likely result in a distribution to unsecured creditors.

Based upon the Debtor's failure to comply with UST reporting requirements, the UST § 1112(b) Motion is GRANTED, except that the Court will dismiss the case, rather than order conversion to Chapter 7 as requested by the UST. **[Note 1]** The Court will enter judgment in favor of the UST for any unpaid quarterly fees.

The Cash Collateral Motion is DENIED as moot in view of the dismissal of the case.

Within seven days of the hearing, the UST shall submit an order on the § 1112(b) Motion and SPS shall submit an order on the Cash Collateral Motion. The Court will prepare and enter an order on the Order to Show Cause.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

[Note 1]

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CONT... Guillermo Luis Calixtro

Chapter 11

Where a debtor files a petition in bad faith, the Court may sanction the debtor by imposing a 180-day bar against re-filing. *Jonathan Barnes Leavitt v. Carlos Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999). Here, the Court found that the Debtor lacked the ability to confirm a Plan of Reorganization. However, upon consideration of the totality of the circumstances, the Court does not find that the filing of the petition was in bad faith, such that imposition of a 180-day would be appropriate.

Party Information

Debtor(s):

Guillermo Luis Calixtro

Pro Se

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2:11-57514 Sondra Derderian

Chapter 11

#11.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18;
8-14-18; 2-12-19; 6-18-19; 9-18-19

Docket 0

Tentative Ruling:

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Hearing required.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

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2:11-57514 Sondra Derderian

Chapter 11

#12.00 Show Cause Hearing
RE: [339] . Order Requiring Reorganized Debtor To Appear And Show Cause
Why This Case Should Not Be Dismissed.

FR. 7-10-19; 9-18-19

Docket 339

Tentative Ruling:

9/23/2019

See Cal. No. 11, above, incorporated in full by reference.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A. Stubbe

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11:00 AM

2:18-11868 Maria Guadalupe Ortiz Santos

Chapter 7

Adv#: 2:18-01403 Yoo v. Gutierrez

#100.00 HearingRE: [17] Motion For Summary Judgment and Notice of Motion

Docket 17

Tentative Ruling:

9/23/2019

For the reasons set forth below, the Motion for Summary Judgment is DENIED.

Pleadings Filed and Reviewed:

- 1) Complaint to Avoid and Recover Fraudulent Transfer [Doc. No. 1] (the "Complaint")
- 2) Notice of Motion and Motion for Summary Judgment [Doc. No. 17] (the "Motion")
 - a) Separate Statement of Uncontroverted Facts and Conclusions of Law in Support of Motion for Summary Judgment [Doc. No. 18]
 - b) Amended Notice of Motion for Summary Judgment [Doc. No. 21]
- 3) Defendant's Memorandum of Points & Authorities in Opposition to Trustee Yoo's Motion for Summary Judgment [Doc. No. 23] (the "Opposition")
 - a) Separate Statement of Genuine Issues of Fact in Opposition to Motion for Summary Judgment [Doc. No. 24]
- 4) Reply of Trustee in Support of Motion for Summary Judgment [Doc. No. 25] (the "Reply")

I. Facts and Summary of Pleadings

On November 28, 2018, the Chapter 7 Trustee (the "Trustee") filed a *Complaint to Avoid and Recover Fraudulent Transfer* [Doc. No. 1] (the "Complaint") against Eduardo Infanzon Gutierrez (the "Defendant"). Pursuant to § 544, the Complaint seeks to avoid, as actually and constructively fraudulent, the Defendant's receipt of \$225,000 of the sale proceeds (the "Sale Proceeds") of a condominium located at 4314 Marina City Drive, Unit 720, Marina del Rey, CA (the "Property"). The Complaint further seeks to recover the Sale Proceeds for the benefit of the estate pursuant to § 550. The Trustee moves for summary judgment on all claims for relief set forth in

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CONT... Maria Guadalupe Ortiz Santos

Chapter 7

the Complaint. The Defendant opposes the Motion.

On May 2, 2019, the Trustee served Requests for Admission (the "RFAs") upon the Defendant. On June 3, 2019, Defendant's counsel requested an extension of time to respond to the RFAs. The Trustee extended Defendant's deadline to respond to the RFAs through and including June 18, 2019. Defendant failed to respond to the RFAs by the June 18, 2019 deadline.

On June 21, 2019, the Trustee advised Defendant's counsel that the RFAs had not been received, and stated that as a result of Defendant's failure to respond, the RFAs were deemed admitted against the Defendant.

On July 28, 2019, Defendant's counsel e-mailed the completed RFAs to the Trustee. The Trustee refused to accept the RFAs because they were untimely. The Trustee filed the instant Motion on July 31, 2019. The Motion seeks entry of summary judgment against the Defendant on the ground that all material facts have been admitted by the Defendant.

Defendant filed an untimely Opposition to the Motion. Defendant seeks to withdraw the RFAs that have been deemed admitted. Defendant submits a declaration stating that he did not timely respond to the RFAs because he is 74 years old, suffers from diabetes and cardiac complications, and needed to translate the RFAs into Spanish to insure the accuracy of his responses.

The Trustee asserts that the Opposition should be stricken because it was not timely filed. The Trustee opposes Defendant's request to withdraw the admissions of the RFAs. The Trustee argues that Defendant has failed to satisfy the "excusable neglect" standard set forth in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). The Trustee notes that Defendant could have, but did not, seek to withdraw his admissions of the RFAs on July 28, 2019, the date upon which the Trustee refused to accept the RFAs. The Trustee states that he would be prejudiced if Defendant were permitted to withdraw his admissions to the RFAs, because the Trustee did not take Defendant's deposition, did not conduct a solvency analysis of the Debtor as of the date of the transfer, and did not pursue mediation, all in reliance upon the deemed admissions.

II. Findings and Conclusions

A. The Motion is Denied

Defendant has failed to diligently comply with his litigation obligations in this action. First, Defendant failed to timely respond to the RFAs, even though the Trustee extended Defendant's response deadline. Second, after the Trustee refused to accept

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the untimely RFAs, Defendant failed to immediately file a motion to withdraw the deemed admissions. Instead, Defendant waited until filing an Opposition to the Motion to seek withdrawal of the deemed admissions. Third, Defendant's Opposition to the Motion was untimely. Defendant's dilatory conduct is not well taken.

Denying Defendant's request to withdraw the deemed admissions would eliminate presentation of the case on the merits and would amount to a case-dispositive sanction. Imposition of a case-dispositive sanction requires the Court to find that Defendant's non-compliance involved "willfulness, fault, or bad faith," and that a lesser sanction would not remediate Defendant's non-compliance. *R & R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d 1240, 1247 (9th Cir. 2012).

Defendant is 74 years old, suffers from diabetes, and suffers from cardiac complications as a result of having previously experienced two heart attacks. Defendant's Decl. [Doc. No. 23] at 2. It was necessary for Defendant to arrange for the RFAs to be translated into Spanish to insure that his responses to the RFAs were accurate. *Id.* As a result of these difficulties, Defendant submitted the RFAs approximately one month late. Notwithstanding these health and language issues, Defendant still could have—and should have—submitted the RFAs timely. However, the Court cannot find that Defendant's lack of diligence rises to the level of "willfulness, fault, or bad faith" such that the imposition of terminating sanctions would be justified. For the reasons discussed below, the Court will grant Defendant's request to withdraw the deemed admissions.

Permitting the Defendant to withdraw the deemed admissions necessitates denial of the Motion. One of the facts deemed admitted was that the Debtor and Defendant agreed that Defendant would receive only \$120,000 from the proceeds of the sale of the Property. In his response to the RFAs, the Defendant explains that the agreement was that the Defendant would receive \$120,000, plus reimbursement for the funds he contributed to pay expenses related to the Property. Defendant further states that Sale Proceeds he received constituted reimbursement for the fact that he had paid the majority of the mortgage and maintenance expenses on the Property during the time the Debtor lived in the Property.

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute

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about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

Here, the Defendant has shown that there are genuine disputed issues of material fact as to whether Defendant's receipt of the Sales Proceeds was actually and constructively fraudulent. Genuine issues of material fact include whether the Defendant paid the mortgage and upkeep expenses on the Property, and whether the Sales Proceeds that Defendant received were commensurate with his payments toward the Property.

B. Defendant's Request to Withdraw the Deemed Admissions is Granted

Under Civil Rule 36(a)(3), a request for admission is "admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." By failing to timely respond to the RFAs, Defendant has admitted the matters set forth in the RFAs.

A matter admitted under Civil Rule 36 "is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended." Civil Rule 36(b). "[T]he court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits." *Id.*

"The first half of the test in Rule 36(b) is satisfied when upholding the admissions would practically eliminate any presentation of the merits of the case." *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007). Here, upholding the admissions would establish Defendant's liability on the fraudulent transfer claims set forth in the Complaint, eliminating any presentation of the merits of the case. Defendant satisfies the first prong of the test in Civil Rule 36(b).

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The second prong requires the Court to consider whether permitting withdrawal "would prejudice the requesting party in maintaining or defending the action on the merits." Civil Rule 36(b). The Ninth Circuit has held:

The party relying on the deemed admission has the burden of proving prejudice.

The prejudice contemplated by Rule 36(b) is 'not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence' with respect to the questions previously deemed admitted.

Conlon v. United States, 474 F.3d 616, 622 (9th Cir. 2007) (internal citation omitted).

"When undertaking a prejudice inquiry under Rule 36(b), district courts should focus on the prejudice that the nonmoving party would suffer at trial." *Id.* at 623. "[R]eliance on a deemed admission in preparing a summary judgment motion does not constitute prejudice." *Id.* at 624. A "lack of discovery, without more," does not constitute prejudice, since the court can reopen the discovery period, "and prejudice must relate to the difficulty a party may face in proving its case at trial." *Id.*

The Trustee argues that he would be prejudiced by a withdrawal of the admissions because he elected not to depose the Defendant or conduct a solvency analysis of the Debtor in view of the admissions. The Ninth Circuit has held that in the Civil Rule 36(b) context, prejudice does not exist unless a party seeks withdrawal of the admissions either in the middle of trial or on the eve of trial. *See, e.g., Conlon*, 474 F.3d at 624 (upholding order denying motion to withdraw admissions that was issued eight days prior to the trial); *999 v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985) (upholding denial of motion to withdraw admissions that was made during the middle of trial). Where trial is not imminent, the preferred approach is to reopen discovery. *See Conlon*, 474 F.3d at 624 (citing with approval *Perez v. Miami-Dade Cty.*, 297 F.3d 1255, 1268 (11th Cir. 2002), in which the court stated that the district court should have extended the discovery deadlines rather than denying the motion to withdraw admissions).

Here, trial is set for the week of October 28, 2019. Because Defendant's request to withdraw his admissions was not made on the eve of trial or in the middle of trial, the Court will reopen discovery, in accordance with the Ninth Circuit's directive in *Conlon*. The litigation deadlines set by way of the *Scheduling Order* [Doc. No. 12]

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entered on March 20, 2019 are VACATED. The following litigation deadlines shall apply:

- 1) The Court has previously entered an order referring this matter to the Mediation Program. Doc. No. 15. The parties shall have completed one day of mediation by no later than **December 10, 2019**.
- 2) A Status Conference is set for **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which shall discuss the results of mediation, shall be filed by no later than fourteen days prior to the hearing.
- 3) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
- 4) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
- 5) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 6) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 7) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 8) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

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- 9) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
- a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - c) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (9)(b) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (9)(d), and shall be filed by the deadline specified in ¶ (9)(d). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 10) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. Within seven days of the

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Chapter 7

hearing, the Trustee shall submit an order incorporating this tentative ruling by reference. The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Guadalupe Ortiz Santos

Represented By
Peter M Lively

Defendant(s):

Eduardo Infanzon Gutierrez

Represented By
Jason E Turner

Plaintiff(s):

Timothy J. Yoo

Represented By
Richard Burstein
Talin Keshishian

Trustee(s):

Timothy Yoo (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
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Wednesday, September 25, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

#1.00 Hearing re [49] Objection to Claim #2 by Claimant Atlantic Wireless, Inc.. in the amount of \$ 2,000,000.00 Filed by Creditor Lea Young Lee

fr: 4-17-19

Docket 0

***** VACATED *** REASON: CONTINUED 2-12-20 AT 10:00 A.M.**

Tentative Ruling:

9/24/2019

No appearances required. The Court has entered an order continuing the hearings on these Claim Objections to **February 12, 2020, at 10:00 a.m.**

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
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Wednesday, September 25, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

#2.00 Hearing re [43] Objection to Claim #2 by Claimant Atlantic Wireless, Inc.. in the amount of \$ \$2,000,000.00

fr: 3-20-19; 4-17-19

Docket 0

***** VACATED *** REASON: CONTINUED 2-12-20 AT 10:00 A.M.**

Tentative Ruling:

9/24/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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2:17-16780 Rafael Cazares-Torres

Chapter 7

#3.00 APPLICANT: Trustee: ROSENDO GONZALEZ

Hearing re [78] and [79] Applications for chapter 7 fees and administrative expense

Docket 0

Tentative Ruling:

9/24/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$23,693.61 requested [*see* Doc. No. 78]

Total Expenses: \$125.06

Total Court Charges: \$350 (for filing of complaint in adversary proceeding) [*see* Doc. No. 74.]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Represented By

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CONT... Rafael Cazares-Torres

Zev Shechtman

Chapter 7

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Hearing Room 1568

10:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

#4.00 APPLICANT: Attorney for Trustee: DANNING, GILL, DIAMOND & KOLLITZ

Hearing re [78] and [79] Applications for chapter 7 fees and administrative expense

Docket 0

Tentative Ruling:

9/24/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$35,355 approved, which includes \$31,707 in interim fees previously approved [see Doc. No. 69] and current fees of \$3,648.

Expenses: \$1,508.33 approved, which includes \$1,289.21 in interim expenses previously approved [see Doc. No. 69] and current expenses of \$219.12.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Represented By

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Zev Shechtman

Chapter 7

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10:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

#5.00 APPLICANT: Accountant for Trustee: LEA ACCOUNTANCY, LLP

Hearing re [78] and [79] Applications for chapter 7 fees and administrative expense

Docket 0

Tentative Ruling:

9/24/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$7,941.50 approved [*See* Doc. No. 76]

Expenses: \$197.35 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

**United States Bankruptcy Court
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10:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

#6.00 APPLICANT: CHARGES: UNITED STATES BANKRUPTCY COURT

Hearing re [78] and [79] Applications for chapter 7 fees and administrative expense

Docket 0

Tentative Ruling:

9/24/2019

See Cal. No. 3, incorporated in full by reference.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

**United States Bankruptcy Court
Central District of California
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Wednesday, September 25, 2019

Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#7.00

POST CONFIRMATION status conference re [121] FIRST
AMENDED Confirmation of chapter 11 plan

f. 7-25-12; 9-12-12; . 12-11-12; 2-27-13; 7-17-13; 8-21-13; 2-18-14; 5-7-14;
8-6-14; 2-17-15; 2-19-15; 2-16-16; 2-7-17; 6-13-17; 12-12-17; **6-6-18; 6-20-18;**
6-11-19

Docket 0

Tentative Ruling:

9/24/2019

No appearances required..

On June 19, 2019, the Court continued the post-confirmation status conference to September 25, 2019, and directed the Debtor to file a status report by no later than September 17, 2019. On July 3, 2019, the Debtor filed a motion for entry of dismissal of his Chapter 11 case ("Motion") [Doc. No. 226], stating that all outstanding payments on his Chapter 11 case were completed.

The Court construes Debtor's motion and declaration both as a status report in response to the Court's order (see cal. no. 8) and a request for final decree on his Chapter 11 case.

On its own motion the Court will issue an show cause why a final decree should not be entered in this case, and the case closed . The Court shall prepare a conforming order, incorporating this tentative ruling by reference.

Party Information

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CONT... David Phillip Rudich

Chapter 11

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno
Alexandre I Cornelius
Jeffrey Lee Costell

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#8.00 HearingRE: [226] Motion to Dismiss Debtor/ Debtor's Motion for Entry of Order
Dismissing Debtor's Chapter 11 Case;

Docket 226

Tentative Ruling:

9/24/2019

This matter is off calendar for the reasons stated in the tentative for calendar
no. 7.

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno

**United States Bankruptcy Court
Central District of California
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Wednesday, September 25, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-2019

Docket 0

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 25, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.10 Hearing re [1572] Issues Pertaining to Transfer Medi-Cal Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-2019

Docket 0

Tentative Ruling:

9/24/2019

At issue is whether Medi-Cal Provider Agreements (the "Provider Agreements") entered into between four hospitals (the "Hospitals") and the California Department of Health Care Services (the "DHCS") are executory contracts which must be transferred pursuant to § 365 of the Bankruptcy Code, or statutory entitlements that may be transferred free and clear of successor liability under § 363 of the Bankruptcy Code. If the Provider Agreements are executory contracts, the DHCS may be entitled to receive payments potentially in excess of \$50 million in connection with the transfer of the Provider Agreements to the purchaser of the Hospitals. By contrast, if the Provider Agreements are statutory entitlements, they can be transferred to the purchaser free and clear of claims and interests under § 363, meaning that the DHCS would receive no payments in connection with the transfer. For the reasons set forth below, the Court finds that the Provider Agreements are statutory entitlements.

Pleadings Filed and Reviewed:

- 1) Debtors' Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief [Doc. No. 2115] (the "Sale Motion")
- 2) Creditor California Department of Health Care Services's Objection to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 1879]
- 3) Creditor California Department of Health Care Services's Supplemental Objection to (1) Debtors' Motion for the Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving form of

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CONT... Verity Health System of California, Inc. Chapter 11

- Asset Purchase Agreement [Doc. No. 3043]
- 4) Official Committee of Unsecured Creditors' Reply to Creditor California Department of Health Care Services's Supplemental Objection to Sale [Doc. No. 3093]
 - 5) Debtors' Reply to California Department of Health Care Services Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3095]
 - a) Objection to Declaration of Hanh Vo in Support of Creditor California Department of Health Care Services's Supplemental Objection to (1) Debtors' Motion for the Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving form of Asset Purchase Agreement [Doc. No. 3115] [**Note 1**]
 - b) Declaration of Anita Chou in Support of Debtors' Reply to the California Department of Health Care Services' Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3112]
 - c) Notice of Debtors' Request to Bifurcate Hearing Regarding California Department of Health Care Services' Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3113]

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On May 2, 2019, the Court entered an order approving the sale of substantially all of the assets of four of the Debtors' hospitals—St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center (collectively, the "Hospitals")—to Strategic Global Management, Inc. ("SGM"). See Doc. No. 2306 (the "SGM Sale Order").

Each of the Hospitals has executed a Provider Agreement with DHCS. The Asset Purchase Agreement (the "APA") [Doc. No. 2305-1] which governs the sale of the Hospitals to SGM provides that the sale cannot close unless a settlement has been reached with DHCS resolving all financial defaults existing under each Provider Agreement. APA at ¶ 8.7.

Pursuant to Cal. Welf. & Inst. Code § 14169.52(a), each of the Hospitals is required to pay a quarterly Hospital Quality Assurance Fee (an "HQA Fee") to the

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DHCS, which is assessed regardless of whether the hospital participates in the Medi-Cal Program. *See* Cal. Welf. & Inst. Code § 14169.52(a) (imposing the HQA Fee upon "each general acute care hospital that is not an exempt facility"). As this Court has previously explained, the "HQA Fee allows California to obtain more healthcare funds from the federal government, which generally matches state Medi-Cal contributions dollar-for-dollar." *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 569 B.R. 788, 791 (Bankr. C.D. Cal. 2017), *aff'd*, No. 2:16-BK-17463-ER, 2018 WL 1354334 (B.A.P. 9th Cir. Mar. 12, 2018) ("*Gardens II*").

According to the DHCS, the Debtors are liable for approximately \$30 million in HQA Fees attributable to the Hospitals. DHCS asserts that the Provider Agreements associated with each Hospital cannot be transferred to SGM unless the Debtors first assume the Provider Agreements under § 365 of the Bankruptcy Code. In the process of assuming the Provider Agreements, the Debtors would be required to cure the unpaid HQA Fees, or provide adequate assurance that the unpaid HQA Fees would be promptly cured.

The Debtors receive Medi-Cal fee-for-service payments on account of medical services provided to Medi-Cal beneficiaries by the Hospitals. DHCS asserts that the Debtors are liable for approximately \$25 million in Medi-Cal fee-for-service overpayments, and that such overpayments must also be cured in connection with the assumption of the Provider Agreements. The Debtors dispute the validity of the audit that resulted in the calculation of the overpayments.

The Debtors contend that the Provider Agreements are not contracts and that it is therefore unnecessary for the Debtors to assume the Provider Agreements under § 365 in order to transfer the agreements to SGM. According to the Debtors, the Provider Agreements are a statutory entitlement to participate in the Medi-Cal program and should be treated as licenses that can be sold, free and clear of claims, interests, and encumbrances, under § 363(f). In support of the contention that the Provider Agreements are not contracts, Debtors argue that the Provider Agreements do not impose any obligations upon the DHCS. Debtors maintain that the only obligations existing under the Provider Agreements are those that are already imposed under applicable law, and that an agreement to comply with applicable law "is a gratuitous promise which does not provide the consideration necessary to make a contract enforceable." *Gardens II*, 569 B.R. at 797.

The Official Committee of Unsecured Creditors (the "Committee") agrees with the Debtors that the Provider Agreements are not contracts. Like the Debtors, the Committee takes the position that the Provider Agreements are assets of the Debtors'

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respective estates that can be sold free and clear of all interests under § 363(f).

II. Discussion

If the Provider Agreements are executory contracts, they can be transferred to SGM only if they are first assumed by the Debtors. To assume an executory contract, the Debtors must either cure all defaults under the contract, or provide adequate assurance that the defaults will be cured promptly. § 365.

An executory contract is “a contract that neither party has finished performing.” *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1657, 203 L. Ed. 2d 876 (2019). Of course, an agreement that is not a contract can never qualify as an executory contract.

Terms not defined in the Bankruptcy Code have the meaning accorded to such terms under nonbankruptcy law. *See Mission Prod. Holdings*, 139 S.Ct. at 1661 (“And ‘breach’ is neither a defined nor a specialized bankruptcy term. It means in the Code what it means in contract law outside bankruptcy.”). The Bankruptcy Code does not define the term “contract,” so the term has the same meaning under § 365 of the Bankruptcy Code as it does under non-bankruptcy law. As the Supreme Court has explained, “[p]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.” *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979).

The first issue the Court must confront, then, is whether the Provider Agreements are contracts. The Court finds that they are not. **[Note 1]**

The Court’s determination of whether the Provider Agreements are contracts is informed by decisions involving Medicare Provider Agreements. For purposes of this issue, there are no meaningful differences between the Provider Agreements and a Medicare Provider Agreement. Both types of agreements allow hospitals to obtain reimbursement from the government for providing healthcare services. In both cases, the hospitals’ reimbursement entitlement is dictated by the Medicare statute and the regulations promulgated thereunder.

In *PAMC, Ltd. v. Sebelius*, 747 F.3d 1214, 1221 (9th Cir. 2014), the Ninth Circuit declined to apply the contract doctrine of “substantial compliance” to a Medicare Provider Agreement. In that case, PAMC, a hospital, appealed the decision of the Secretary of the Department of Health and Human Services to reduce the reimbursements for which PAMC was eligible. PAMC’s reimbursements had been

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reduced because it had submitted certain required data 28 minutes late. In challenging the Secretary's decision to reduce its reimbursement eligibility, PAMC argued, among other things, that it had substantially complied with the terms of its Medicare Provider Agreement. The Ninth Circuit rejected PAMC's attempt to avail itself of the contract doctrine of "substantial compliance":

[T]he whole notion of importing contract doctrines into an area that is a complex statutory and regulatory scheme is problematic. We have, on occasion, stated that providers and others have contracts with the government in this area, but our decisions have turned on the regulatory regime rather than on contract principles. *See, e.g., United States v. Bourseau*, 531 F.3d 1159, 1162, 1169–70 (9th Cir.2008); *Pac. Coast Med. Enters. v. Harris*, 633 F.2d 123, 125 n. 1, 133–35 (9th Cir.1980). As the Eleventh Circuit Court of Appeals held when hospitals complained of legislative impairment of their contract rights in this area because they had agreements with the Secretary: "Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contractual right." *Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir.1983); *see also Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 669, 105 S.Ct. 1544, 1552, 84 L.Ed.2d 590 (1985) (stating that while states had "grant agreements" with the federal government and those had a "contractual aspect," the program should not be viewed like a "bilateral contract" and should not "be construed most strongly against the drafter" (internal quotation marks omitted)); *cf. Sebelius v. Auburn Reg'l Med. Ctr.*, — U.S. —, —, 133 S.Ct. 817, 828–29, 184 L.Ed.2d 627 (2013) (declining to apply equitable tolling principles to time set by Secretary for appealing to the Board); *Kaiser Found. Hosps.*, 649 F.3d at 1160 (declining to apply excusable neglect equitable analysis to Board's dismissal of case for "failure to timely submit a position paper").

PAMC, Ltd. v. Sebelius, 747 F.3d 1214, 1221 (9th Cir. 2014).

Other courts have been even more explicit in stating that a Medicare Provider Agreement is not a contract. In *Mem'l Hosp. v. Heckler*, cited with approval in *PAMC*, hospitals argued that new legislation reducing the amount of Medicare reimbursements they were entitled to receive constituted "an unconstitutional taking of their property without just compensation in violation of the fifth amendment, because it would abrogate a vested contractual right to Medicare reimbursement."

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Heckler, 706 F.2d 1130, 1136 (11th Cir. 1983). The *Heckler* court squarely rejected the hospital's contention that the Medicare Provider Agreement was a contract: "Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contractual right." *Heckler*, 706 F.2d at 1136.

Significantly, the *Heckler* court observed that "[c]ourts have upheld retroactive adjustments in the Medicare reimbursement system." *Id.* It emphasized that such retroactive adjustments were permissible precisely because Medicare Provider Agreements were not contracts. *Id.* A similar result was reached in *Germantown Hosp. & Med. Ctr. v. Heckler*, 590 F. Supp. 24, 30–31 (E.D. Pa. 1983), *aff'd sub nom. Germantown Hosp. & Med. Ctr. v. Schweiker*, 738 F.2d 631 (3d Cir. 1984), in which the court held:

There is no contractual obligation requiring [the Department of Health and Human Services] to provide Medicare reimbursement. Rather, upon joining the Medicare program, providers gain a statutory entitlement to reimbursement. Thus the amount of reimbursement is governed not by contract but by statute; specifically the Medicare Act's "reasonable cost" provisions.

Germantown, 590 F.Supp. at 30–31.

Similarly, in *Guzman v. Shewry*, the Ninth Circuit held that a Medi-Cal Provider Agreement was not a contract. 552 F.3d 941 (9th Cir. 2009). In *Guzman*, a physician sought a preliminary injunction to prevent the DHCS from temporarily suspending him from the Medi-Cal program. Among other things, the physician argued that because his suspension deprived him of the ability to receive reimbursement for treating Medi-Cal patients, he had been deprived of his right to contract with the state. *Id.* at 954. Rejecting this argument, the court held that "[p]articipation in the Medi-Cal program entitles Guzman to reimbursement for treating patients who receive Medi-Cal benefits; it does not involve bidding on government contracts." *Id.*

In addition, the Provider Agreements lack a key feature found in all contracts—obligations imposed on both parties to the agreements. It is true that the Provider Agreements contain language which purports to impose obligations upon the DHCS. However, this language merely reiterates obligations which DHCS already has under applicable law. As this Court has previously held, "an agreement to comply with applicable law is a gratuitous promise which does not provide the consideration necessary to make a contract enforceable." *Gardens Reg'l*, 569 B.R. at 797. To qualify

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as contracts, it would be necessary for the Provider Agreements to impose upon DHCS some obligation that DHCS was not already required to perform under applicable law.

DHCS cites a number of provisions within the Provider Agreement that it claims constitute consideration sufficient to render the Provider Agreements contractual in nature. However, all of the provisions which DHCS cites are merely restatements of federal law, federal regulations, state law, or state regulations. For example, the following provisions, cited as examples of consideration by DHCS, are codified in various laws or regulations:

- 1) Debtors will be subject to the sanctions available to DHCS if they fail to comply with applicable law.
- 2) To submit a treatment authorization request, the Debtors must use a National Provider Identifier (“NPI”) that is appropriately registered and is compliant with all NPI requirements.
- 3) Debtors cannot engage in conduct inimical to public health, morals, welfare, or safety.
- 4) Debtors cannot refuse healthcare services based upon race, color, ancestry, marital status, national origin, gender, age, economic status, or physical or mental disability.
- 5) Only qualified medical personnel may provide healthcare services.
- 6) Any overpayments must be repaid by the Debtors in accordance with applicable statutes and regulations.
- 7) Debtors are subject to certain automatic and permissive suspensions and mandatory and permissive exclusions.

DHCS cites a number of cases in which courts have held that Medicare Provider Agreements are executory contracts. These authorities are not persuasive, because the issue of whether the provider agreements were executory contracts versus statutory entitlements was not litigated. Instead, the courts simply assumed, without meaningful analysis, that the provider agreements were executory contracts.

For example, in *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992), the Third Circuit assumed that a Medicare Provider Agreement was an executory contract, even though the Third Circuit had ruled eight years prior in *Germantown Hosp. & Med. Ctr. v. Schweiker*, 738 F.2d 631, 632 (3d Cir. 1984) that Medicare Provider Agreements are statutory entitlements, not contracts. In *Germantown*, the

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court rejected the argument that a reduction in Medicare reimbursement rates impaired the contract rights of the Medicare providers. *Id.* The *University Medical Center* decision contained no discussion of *Germantown* and made no attempt to reconcile *Germantown*'s holding that reductions to Medicare reimbursement rates did not amount to a breach of contract. Similarly, in *In re Heffernan Memorial Hospital District*, 192 B.R. 228, 231 n.4 (Bankr. S.D. Cal. 1996), the issue was not litigated and the debtor appeared to concede that the provider agreement was an executory contract. Likewise, in *In re St. Johns Home Health Agency, Inc.*, 173 B.R. 238 (Bankr. S.D. Fla. 1994), the debtor conceded that the provider agreement was an executory contract, and the Bankruptcy Court disregarded prior binding Eleventh Circuit precedent rejecting the contention that a provider agreement gave the provider "a vested contractual right to Medicare reimbursement." *Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983).

Having found that the Provider Agreements are not contracts and therefore are not subject to assumption and assignment under § 365, the Court must determine whether the Provider Agreements can be sold free and clear of liens, claims, and interests under § 363.

Courts have held that interests such as the Provider Agreements constitute "property of the estate" under § 541 that may be sold under § 363. In *Matter of Fugazy Exp., Inc.*, 124 B.R. 426, 430 (S.D.N.Y. 1991), the court held that a license issued by the Federal Communications Commission was property of the estate, notwithstanding a provision within the Federal Communications Act providing that the Act did not create ownership rights in licenses. The holding is consistent with Ninth Circuit precedent stating that "[g]overnment licenses, as a general rule, are considered to be 'general intangibles' under the Uniform Commercial Code, 'i.e., personal property interests in which security interests may be perfected.'" *MLQ Inv'rs, L.P. v. Pac. Quadracasting, Inc.*, 146 F.3d 746, 749 (9th Cir. 1998).

The Court finds that the Provider Agreements are akin to a license issued by a government agency, and therefore that the Provider Agreements may be sold under § 363. The Provider Agreements create a statutory entitlement to bill the Medi-Cal program for providing Medi-Cal services. *See Guzman*, 552 F.3d at 954 (stating that "[p]articipation in the Medi-Cal program entitles [physician] Guzman to reimbursement for treating patients who receive Medi-Cal benefits"). This right to receive reimbursement for providing healthcare services is a property interest.

DHCS contends that the Hospitals hold no property interest in the Provider Agreements and that as a result, the Provider Agreements cannot be sold under § 363.

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In support of its position, DHCS cites *Erickson v. U.S. ex rel. Dep't of Health & Human Servs.*, 67 F.3d 858, 862 (9th Cir. 1995), in which the court held that a physician convicted of submitting false claims to Medicare did "not possess a property interest in continued participation in Medicare, Medicaid, or the federally-funded state health care programs." *Id.*

DHCS ignores the difference between a property interest in the right to *continue* to participate in Medi-Cal and a property interest in the *existing* right to bill Medi-Cal for providing services. *Erickson* stands for the unremarkable proposition that a Medi-Cal provider who engages in criminal conduct has no right to continue as a Medi-Cal provider. No one disputes that if the Hospitals violated Medi-Cal statutes or regulations, their right to continue as Medi-Cal Providers could be suspended. But at present, the Provider Agreements are in good standing and the Hospitals have the right to receive reimbursements for providing services to Medi-Cal beneficiaries. It is this right that amounts to a property interest.

The Provider Agreements may be sold free and clear of the liabilities which DHCS contends attach to the Provider Agreements. This includes the alleged liabilities for approximately \$30 million in unpaid HQA Fees and \$25 million in Medi-Cal overpayments (collectively, the "Liabilities").

Section 363(f)(1) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate" if certain conditions are satisfied. As this Court has previously explained:

The Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f). The Third Circuit has held that the phrase "interest in ... property" is "intended to refer to obligations that are connected to, or arise from, the property being sold." *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw "in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property." 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).

Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment

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insurance statutes constituted an "interest in ... property." The taxes were computed based on the Debtor's "experience rating," which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70. Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an "interest in ... property" within the meaning of § 363(f).

In re Gardens Reg'l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

The Liabilities are an “interest in property” within the meaning of § 363(f). The Liabilities arise because the Hospitals have elected to exercise their statutory entitlement to provide medical services, and receive reimbursement for providing such services, under the Provider Agreements. As such, the Liabilities are a monetary obligation arising from the ownership of property (the property being the reimbursement rights associated with the Provider Agreements).

The Provider Agreements may be sold free and clear of the Liabilities only if one or more of the conditions specified in § 363(f)(1)–(5) is satisfied. Here, the Court finds that § 363(f)(5) is satisfied. Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest “could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

The interest that DHCS holds in the Provider Agreements is its right to receive payment of the Liabilities. DHCS could be compelled to accept a money satisfaction of such interest in a legal or equitable proceeding. In fact, receiving a money satisfaction is and has been DHCS’ objective all along. Throughout these cases, DHCS has withheld funds payable to the Hospitals to recover the Liabilities. **[Note 3]** That DHCS would accept a money satisfaction is apparent in its briefing. DHCS states that the Debtors must “pay the debt through the proceeds of the sale” or “within five days of the closing of the sale,” and that the Debtors “must establish and maintain a trust account in the amount of \$70 million for 36 months for potential reimbursement

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to [DHCS] of any Medi-Cal overpayment” Doc. No. 3043 at 10.

The Debtors request that the order on the Motion state that DHCS’ recoupment rights against SGM, if any, must be first exercised against payments due to the Debtors from Medi-Cal, then against funds held by the Debtors generated by past interim Medi-Cal payments, and then against any sale proceeds generated by the sale of the Provider Agreement. The issue of the applicability of recoupment subsequent to the sale of the Provider Agreements free and clear of claims and interests has not been sufficiently briefed. The Court declines to decide the issue at present, without prejudice to the ability of interested parties to raise the issue by way of motion.

DHCS requests that the order on the Motion be stayed for 14 days, pursuant to Bankruptcy Rule 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. The sale to SGM is not expected to close until mid-to-late October 2019. Because the Provider Agreements will not be transferred to SGM until the sale closes, the stay imposed by Bankruptcy Rule 6004(h) is not necessary to protect DHCS’ right to appeal.

III. Conclusion

Based upon the foregoing, the Debtors are authorized to sell the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances, pursuant to § 363(f)(5).

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Debtors object to declaration testimony submitted by Hanh Vo with respect to the amount of the Liabilities. As a result of its determination that the Provider Agreements may be sold free and clear of the Liabilities, it is not necessary for the Court to adjudicate the amount of the Liabilities at this time. Because the Court has

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not considered the Vo declaration in reaching its decision, the Court does not rule upon the Debtors' evidentiary objection. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections.").

Note 2

In *Gardens II*, the Court found that under the principle of equitable recoupment, DHCS could withhold Medi-Cal and supplemental quality assurance payments owed to a debtor, for the purpose of recovering unpaid hospital quality assurance fees owed by the debtor. *Gardens II* did not decide whether a Medi-Cal Provider Agreement was a contract or a statutory entitlement akin to a license, as the issue did not affect the outcome of the decision:

The Court finds that, regardless of whether the Provider Agreement is considered a license or contract, the Debtor's HQA Fee liability and entitlement to Medi-Cal Payments would still arise from the same transaction or occurrence.... As discussed previously, the Debtor's acknowledgment in the Provider Agreement that unpaid HQA Fees could be withheld from its Medi-Cal Payments establishes the necessary logical relationship between the Debtor's fee liabilities and its payment entitlements. That logical relationship exists whether the Provider Agreement is classified as a license or a contract.

Gardens II, 569 B.R. at 799.

In support of its argument that the Provider Agreements are executory contracts, DHCS cites the observation made in *Gardens II* that Medicare Provider Agreements "are similar in many respects to ... [a] Medi-Cal Provider Agreement ..."). *Gardens II*, 569 B.R. at 799 n.12. DHCS then cites decisions holding that Medicare Provider Agreements are executory contracts. As discussed in greater detail below, the Court does not find the decisions cited by DHCS to be persuasive, because they reached the conclusion that Medicare Provider Agreements are executory contracts without meaningful analysis.

Note 3

DHCS asserts that its withholdings are authorized under the equitable principle of recoupment. As the issue is not presently before it, the Court expresses no opinion on whether the withholdings were permissible recoupments.

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Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#10.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19

Docket 2557

***** VACATED *** REASON: cont'd to 10/2/2019 at 10:00 am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#11.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19

Docket 2558

***** VACATED *** REASON: cont'd to 10/2/2019 at 10:00 am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#12.00 Hearing re [1572] and [1858] and [2145] Cure Objection Asserted by
UnitedHealthcare Insurance Company

fr. 4-17-19; 6-5-19; 7-10-19; 7-24-19

Docket 1858

*** VACATED *** REASON: PER ORDER ENTERED 9/24/19

Tentative Ruling:

9/24/2019

No appearances required. The Court has entered an order approving the
Stipulation Resolving UnitedHealthcare Recoupment Objection [Doc. No.
3097].

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

UnitedHealthcare Insurance

Pro Se

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#13.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19

Docket 2157

***** VACATED *** REASON: CONTINUED 10-9-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 HearingRE: [3011] Motion to Approve Compromise Under Rule 9019 Debtors' Notice and Motion to Approve Settlement and Asset Purchase Agreement By and Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and Radnet Management, Inc; Declaration of Richard G. Adcock in Support Thereof

Docket 3011

Tentative Ruling:

9/24/2019

The Court is prepared to GRANT the Motion, subject to confirmation that the Motion was served upon interested parties. (As of the date of the issuance of this tentative ruling, no Certificate of Service is on file.) Debtors shall appear to advise the Court of the status of service.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve Settlement and Asset Purchase Agreement By and Between Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and Radnet Management, Inc. [Doc. No. 3011] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2445 and 2446 [Doc. No. 2489]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion to Approve Terms of a Private Sale of Clinics to Union Square Hearing, Inc. in Accordance with Sections 363(b) and (f) of the Bankruptcy Code [Doc. No. 2500]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors move approval of a *Settlement and Asset Purchase Agreement* (the

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“APA”) between Debtors Verity Medical Foundation (“VMF”) and VHS, on the one hand, and RadNet Management, Inc. (“RadNet”), on the other hand. The APA provides for the sale of VMF’s interest in a bank account at JP Morgan Chase Bank, Inc. with an account number ending in 2072 (the “Chase Account”) to RadNet, for an aggregate purchase price of \$123,000.

On August 31, 2017, VMF entered into a purchase agreement with RadNet (the “VMF-RadNet APA”), pursuant to which VMF acquired all of the fixed assets and leasehold rights used in the oncology services business Breastlink Medical Group, Inc. (“Breastlink”). Under the VMF-RadNet APA, VMF holds title to the Chase Account, but RadNet controls the Chase Account and is required to transfer receipts credited to the Chase Account related to the Breastlink business to VMF.

On March 27, 2019, the Court approved the sale of certain of VMF’s assets, including Breastlink, to Oncology Technology Associates, LLC (“OTA”). The order approving the sale provides that VMF retains title to the Chase Account and that Breastlink receipts credited to the Chase Account after March 31, 2019 belong to VMF. Since the sale of Breastlink to OTA, the Debtors and RadNet have worked together to reconcile various accounts receivable and payable between them. As part of this process, RadNet and VMF have agreed to a final reconciliation of the proceeds in the Chase Account attributable to VMF’s operation of the Breastlink business. The Parties have agreed to transfer title of the Chase Account and its proceeds to RadNet in exchange for a one-time payment by RadNet to VMF of \$123,000. The payment represents the Parties’ estimate of the amount of the deposits in the Chase Account related to the Breastlink business.

No opposition to the Motion is on file.

II. Findings and Conclusions

A. The Court Approves the Settlement With RadNet

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the

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compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Applying the *A&C Properties* factors, the Court finds that the settlement with RadNet is adequate, fair, and reasonable, and is in the best interests of the estate and creditors. The settlement relieves the Debtors of any further administrative burden associated with the Chase Account and reconciliation of the proceeds attributable to the Breastlink business. Absent the settlement, the Debtors and RadNet would be required to litigate disputes regarding reconciliation of the proceeds deposited into the Chase Account. The settlement provides for the immediate infusion of cash into the estates. No creditors have opposed the settlement.

B. The Debtors are Authorized to Sell the Chase Account to RadNet

Section 363(b) permits a debtor to sell estate property out of the ordinary course of business, subject to Court approval. The debtor must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Court finds that the sale provides optimal value to the estate. The sale will generate \$123,000 in funds for the estates and will eliminate administrative burdens associated with the Chase Account.

Pursuant to § 363(f)(2), the sale is free and clear of liens, claims, and interests. To the extent any entity asserts a lien or other interest in the Chase Account, such entity's failure to file an opposition to the Motion constitutes consent to a sale free and clear of its interest. [Note 1]

The Debtors shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

Note 1

This finding applies only to entities who received notice of the Motion. In the

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event an entity asserting an interest in the Purchased Assets did not receive notice of the Motion, such entity would not be deemed to consent to a sale free and clear of its interest.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#14.10 Hearing re [1572] and [2157] Cure Objection Asserted by **NantHealth, Inc.**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19

Docket 2157

Tentative Ruling:

9/25/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

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2:19-13059 Norberto Pimentel and Erica Pimentel

Chapter 7

#15.00 Hearing
RE: [50] Motion To Compel Cooperation with Trustee's Broker (Stevens, Adam)

Docket 50

Tentative Ruling:

9/24/2019

Subject to any opposition that may be presented at the hearing, the Court is prepared to GRANT the Motion and order the Debtors to cooperate with the Trustee's real estate broker.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for an Order Compelling the Debtors to Cooperate with the Trustee's Real Estate Brokers and Admit the Prospective Buyers Onto the Property Located at 11421 Angell Street, Norwalk, CA 90650 Pursuant to 11 U.S.C. §§ 105(a) and 521(a)(3) [Doc. No. 50 (the "Motion")
 - a) Declaration of Georgeann Hunter Nicol [Doc. No. 49]
 - b) Application for Order Setting Hearing on Shortened Notice [Doc. No. 47]
 - i) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 52]
 - c) Declaration of Notice and Service [Doc. No. 55]

I. Facts and Summary of Pleadings

Noberto Pimentel and Erica Pimentel (collectively, the "Debtors") filed a joint voluntary Chapter 7 petition on March 20, 2019. The Debtors scheduled their interest in real property located at 11421 Angell Street, Norwalk, CA 90650 (the "Property"). On July 25, 2019, the Court denied the Debtors' motion to convert to Chapter 13 (the "Conversion Motion"). *See* Doc. No. 41. The Court found that Debtors' bad faith failure to provide accurate and complete information in their schedules and in response to questioning under oath warranted denial of the Conversion Motion. *See* Final Ruling Denying Conversion Motion [Doc. No. 40].

On June 18, 2019, the Court authorized the Chapter 7 Trustee (the "Trustee") to

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employ Keller Williams Realty (the "Broker") to market the Property. *See* Doc. No. 35.

The Trustee moves for an order compelling the Debtors to cooperate with the Broker in arranging for the Property to be shown to potential buyers. The Trustee states that the Debtors have refused to cooperate with the Broker regarding access to the Property. The Court granted the Trustee's application for an order setting a hearing on this Motion on shortened notice. *See* Doc. No. 52.

As of the date of the issuance of this tentative ruling, no Opposition to the Motion is on file.

II. Findings and Conclusions

A. Notice of the Motion

The Trustee did not provide notice of the Motion as ordered by the Court. The Debtors did not receive notice of the hearing date until September 21, 2019; the Court ordered the Trustee to provide the Debtors telephonic notice of the hearing by no later than 8:00 p.m. on September 18, 2019.

The Trustee did not provide the Debtors' counsel telephonic notice of the hearing by September 18, 2019, at 8:00 p.m., as ordered by the Court. However, the Debtors' counsel did receive electronic notice of the hearing, by means of the Court's Notice of Electronic Filing System, on September 18, 2019, at 2:51 p.m.

Given that the Motion concerns the Trustee's attempts to market the Property, the Court will not require the Trustee to renotice the hearing. However, the Court will permit the Debtors to present an oral opposition to the Motion at the hearing, even though the Debtors have not submitted a written opposition by September 23, 2019, at 1:00 p.m., the deadline ordered by the Court.

B. The Motion is Granted

Section 521(a)(3) provides that the "debtor shall ... cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title."

The Property is an asset of the estate which the Trustee is responsible for administering for the benefit of creditors. The Trustee has obtained the Court's approval to employ the Broker to assist him with his duties. The Debtors' failure to cooperate with the Broker in scheduling showings of the Property to prospective purchasers constitutes a failure to cooperate with the Trustee.

The Debtors voluntarily subjected themselves to the requirements of the Bankruptcy Code, including the obligation to cooperate the Trustee, by choosing to

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seek bankruptcy relief. "A chapter 7 debtor has an affirmative duty to cooperate with the case trustee in the administration of the bankruptcy estate.... This duty to cooperate is based upon one of the very simple goals of any chapter 7 case—to maximize the return to creditors through the orderly liquidation of the assets. Where a debtor fails to cooperate with the case trustee, the trustee is then forced to expend estate resources in pursuing the debtor's cooperation, which results in the reduction of the distribution to creditors." *In re Stinson*, 269 B.R. 172, 176 (Bankr. S.D. Ohio 2001)

The Court will enter an order compelling the Debtors to cooperate with the Broker. The Trustee should not have been required to file a motion to compel the Debtors to fulfill their statutory obligations under the Bankruptcy Code. Therefore, the Trustee's request for attorneys' fees is GRANTED. The Debtors shall pay the Trustee's counsel \$500 in attorneys' fees as a sanction for failing to fulfill their obligation to cooperate with the Trustee. *See Stinson*, 269 B.R. at 176 (ordering the debtors to pay the attorneys' fees incurred by the Trustee after the debtors failed to fulfill their obligation to cooperate with the Trustee).

Party Information

Debtor(s):

Norberto Pimentel

Represented By
Marcus Gomez

Joint Debtor(s):

Erica Pimentel

Represented By
Marcus Gomez

Trustee(s):

Wesley H Avery (TR)

Represented By
Adam Stevens

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2:17-10925 MARIA MARTINA GRAVER

Chapter 7

#100.00 HearingRE: [66] Application for Compensation First Interim Application For Award Of Compensation And Reimbursement Of Expenses Of Danning, Gill, Diamond & Kollitz, LLP, As General Counsel To Chapter 7 Trustee; Declarations Of Zev Shechtman And John J. Menchaca In Support Thereof, with Proof of Service for Danning Gill Diamond & Kollitz LLP, General Counsel, Period: 3/1/2017 to 7/31/2019, Fee: \$26,945.00, Expenses: \$499.85.

Docket 66

Tentative Ruling:

9/24/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below.

Fees: \$26,945 granted in full, \$17,500 of which to be paid, on an interim basis subject to available cash in the estate.

Expenses: \$499.85 granted in full and paid on an interim basis, subject to available cash in the estate.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

MARIA MARTINA GRAVER

Represented By
Jonathan T Nguyen

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CONT... MARIA MARTINA GRAVER

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Trustee(s):

John J Menchaca (TR)

Represented By
Sonia Singh
Zev Shechtman

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2:18-19855 Lux Beauty Group, Inc.

Chapter 7

#101.00 Hearing re [44] Objection To Priority Proof Of Claim No. 14 Filed By Premium Export Consulting Aka Odile Olleris

Docket 0

Tentative Ruling:

9/24/2019

For the reasons set forth below, the Trustee's Claim Objection is SUSTAINED, and classification of Claim No. 14 as a priority claim is DISALLOWED. Claim No.14 shall be reclassified as a general unsecured claim.

Pleadings Filed and Reviewed:

- 1) Objection to Claim No. 14 [Doc. No. 44] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 45]
- 2) No Opposition to Claim Objection is on file

I. Facts and Summary of Pleadings

Lux Beauty Group, Inc. (the "Debtor") commenced a voluntary Chapter 7 petition on August 24, 2019. On January 7, 2019, Premium Export Consulting aka Odile Olleris (the "Claimant") filed a proof of claim asserting an unsecured priority claim totaling \$2,000 (the "Claim"). See Claim Objection, Rund Decl. Ex. A. The Claim was allegedly entitled to priority pursuant to § 507(a)(4). In support of the Claim, Claimant attached a document titled *Mutual Release and Settlement Agreement* (the "Settlement Agreement"), as well as a singular e-mail addressed from Debtor's Chief Executive Officer to Claimant. Claim at 5–8.

Trustee Jason M. Rund (the "Trustee") herein partially objects to the Claim, insofar as it was classified as a priority claim and thereby requests its reclassification to a general unsecured claim. The Trustee objects on grounds that Claimant's evidence does not establish that the Claim is entitled to priority status pursuant to § 507(a)(7), which requires that a claim relate to earned wages, salaries, or commissions with time and amount limitations set by the statute. Instead, the Trustee concludes

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that the evidence proffered suggests the Claim relates to general business debt between Claimant and Debtor. As of the preparation of this tentative ruling, no opposition is on file.

II. Findings and Conclusions

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

The evidence proffered in support of the Claim does not demonstrate that it is entitled to priority under § 507(a)(4), which provides in relevant part:

Allowed unsecured claims are prioritized "but only to the extent of \$12,850 for each individual or corporation...earned within 180 days before the date of the filing of the petition...for—

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- (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor."

Here, the Settlement Agreement indicates that the amount owed by Debtor to the Claimant was likely the resolution of a dispute for unpaid debt, which is itself referenced by Debtor's CEO in an attached e-mail. *See* Claim Objection, Rund Decl. Ex. A. Moreover, the Settlement Agreement is devoid of any terms and provisions evincing an intention by the signatories to enter into an employment agreement, or a similar relationship. Instead, the Settlement Agreement can reasonably be interpreted, as the Trustee contends, to be an agreement to pay a lump sum to settle prior business debt totaling \$10,000. Therefore, the Court determines that the burden of proof has shifted back to Claimant, and in the absence of any further evidence, the Trustee's Claim Objection is SUSTAINED.

The Court hereby DISALLOWS the Claim's priority classification and reclassifies it as a general unsecured claim. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Lux Beauty Group, Inc.

Represented By

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Anthony A Friedman
Kurt Ramlo

Trustee(s):

Jason M Rund (TR)

Represented By
Diane C Weil

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2:19-16669 Parkridge Private School, Inc.

Chapter 7

Adv#: 2:19-01213 Santos et al v. Parkridge Private School, Inc.

#102.00 HearingRE: [15] Motion to Dismiss Adversary Proceeding and Notice of Motion to Dismiss Adversary Proceeding

Docket 15

Tentative Ruling:

9/24/2019

For the reasons set forth below, the Motion is DENIED. By separate order, the Court will require Plaintiffs to appear and show cause why the Court should not lift the automatic stay to permit the State Court Action to proceed and abstain from adjudicating the Complaint.

Pleadings Filed and Reviewed:

- 1) Complaint for Nondischargeability of Debt: (1) Fraud and Deceit; (2) Negligent Misrepresentation; (3) Violation of Business & Professions Code § 17200; (3) Violation of Business & Professions Code § 17500; (5) Violations of the Consumer Legal Remedies Act; and (6) Conspiracy [Doc. No. 1] (the "Complaint")
- 2) Notice of Motion and Motion to Dismiss Adversary Complaint Under FRCP 12(b)(6) [Doc. No. 15] (the "Motion")
- 3) Plaintiffs' Opposition to Defendant's Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) [Doc. No. 17] (the "Opposition")
- 4) Reply to Opposition to Motion to Dismiss Adversary Complaint Under FRCP 12(b)(6) [Doc. No. 18] (the "Reply")
 - a) Notice of Errata Re: Reply [Doc. No. 19]

I. Facts and Summary of Pleadings

Parkridge Private School, Inc. (the "Parkridge") filed a voluntary Chapter 7 petition on June 6, 2019. On July 12, 2019, Efrain Santos and Evelyn Lambert (the "Plaintiffs") filed a *Complaint for Nondischargeability of Debt: (1) Fraud and Deceit; (2) Negligent Misrepresentation; (3) Violation of Business & Professions Code § 17200; (3) Violation of Business & Professions Code § 17500; (5) Violations of the*

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Consumer Legal Remedies Act; and (6) Conspiracy [Doc. No. 1] (the "Complaint") against Parkridge.

Under the heading "General Allegations," the Complaint alleges:

Through this bankruptcy proceeding, Parkridge is attempting to discharge those obligations and avoid paying Plaintiffs what they [are] owed. As set forth in Plaintiffs' complaint, Section 523 of the Bankruptcy Code prohibits discharge for these exact types of acts. This Court should not permit Parkridge [to] avoid Plaintiffs' valid and non-dischargeable interest by abusing the Bankruptcy Code.

Complaint at ¶ 10.

The Complaint alleges that Parkridge operated a diploma mill and issued at least 6,000 false high school diplomas. *Id.* at ¶¶ 27–31. The Complaint seeks class certification on behalf of a putative class consisting of residents of the State of California who purchased educational services from Parkridge from January 2012 through the present. *Id.* at ¶ 46. The Complaint asserts claims for fraud and deceit, conspiracy to commit common law fraud, negligent misrepresentation, violations of the Business and Professions Code, and violation of the Consumer Legal Remedies Act, and seeks a money judgment on behalf of members of the putative class. Other than the allegations set forth in ¶ 10, quoted above, there are no allegations regarding the dischargeability of the damages sought.

Summary of Papers Filed in Connection with Parkridge's Motion to Dismiss

Parkridge moves to dismiss the Complaint, pursuant to Civil Rule 12(b)(6), for failure to state a claim upon which relief can be granted. According to Parkridge, the Complaint seeks to except Plaintiffs' claims from discharge. Parkridge notes that under § 727(a)(1), it is not eligible to receive a discharge since it is not an individual. Parkridge argues that since it cannot receive a discharge, the Complaint fails to state a claim, and cannot ever be amended to state a claim.

Plaintiffs dispute Parkridge's characterization of the Complaint. Plaintiffs state that the Complaint mentions "nondischargeability of debt" for purposes of context but does not assert a nondischargeability claim. Plaintiffs assert that the Motion should be denied for the following reasons:

- 1) Plaintiffs have standing to bring each of their claims against Parkridge.

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Parkridge Private School, Inc.

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Specifically, as alleged in the Complaint, Plaintiffs have sustained particularized injuries as a result of Parkridge's wrongdoing, Plaintiffs' claims are not "general" and cannot be brought by any other creditor, and the Chapter 7 Trustee lacks standing to assert Plaintiffs' claims.

- 2) The Complaint is a core proceeding, notwithstanding the fact that it asserts claims under state law. Pursuant to 28 U.S.C. § 157(b)(3), a determination "that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by state law." Plaintiffs' claims invoke substantive rights created by bankruptcy law since the adjudication of those claims will affect property of Parkridge's estate. Alternatively, the Complaint falls within the Court's "related to" jurisdiction.
- 3) In the event the Court determines that the Complaint fails to state a claim, Plaintiffs should be granted leave to amend.

Parkridge makes the following arguments in Reply to Plaintiffs' Opposition:

- 1) None of Plaintiffs' arguments are relevant. The Motion to Dismiss mentions nothing about standing, whether the Complaint is a core proceeding, or the Court's "related to" jurisdiction. Parkridge can only assume that Plaintiffs, realizing that a dischargeability complaint is not legally supportable, seek to change tactics by arguing that the Complaint belongs in Bankruptcy Court anyway.
- 2) Notwithstanding the fact that the Complaint's caption states "Complaint for Nondischargeability of Debt," Plaintiffs now claim that the Complaint is not one for dischargeability at all. If this is true, the Complaint violates Civil Rule 8 since it is misleading and does not give Parkridge fair notice of the relief being sought. For that reason as well, the Complaint should be dismissed.
- 3) If the Complaint is not brought under § 523, then it is unclear what relief is being sought. Plaintiffs have already filed two proofs of claim, each in the amount of \$4.5 million. In view of the filing of these proofs of claim, the Complaint is an unnecessary redundancy.
- 4) By now taking the position that the Complaint does not seek relief under § 523, Plaintiffs are effectively seeking to amend the Complaint without a motion requesting permission to do so. The deadline for Plaintiffs to file an amended complaint as of right has passed. If Plaintiffs wish to amend the Complaint, they must file a motion so requesting.

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II. Findings and Conclusions

A. The Motion to Dismiss is Denied

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

The Complaint's caption is misleading, suggesting that the Complaint is for dischargeability, when in fact none of the claims for relief asserted in the Complaint are brought under § 523. Parkridge is correct that a dischargeability claim would fail to state a claim for relief, since Parkridge is a business entity that is not eligible to receive a discharge. However, Parkridge's contention that the Complaint is brought under § 523 mischaracterizes the Complaint. The Complaint contains 164 paragraphs of allegations; only one paragraph refers to § 523. None of the six claims for relief pleaded in the Complaint pertain to dischargeability. As to these six claims, the

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CONT... **Parkridge Private School, Inc.**

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Complaint seeks money damages.

Because Parkridge's Motion is predicated upon a mischaracterization of the Complaint, the Motion is DENIED. Parkridge has failed to demonstrate that the Complaint's claims for fraud and deceit, conspiracy to commit common law fraud, negligent misrepresentation, violations of the Business and Professions Code, and violation of the Consumer Legal Remedies Act fail to state claims upon which relief can be granted.

B. The Court Will Require Plaintiffs to Show Cause Why the Court Should Not Lift the Automatic Stay, Allow the State Court Action to Proceed, and Abstain from Hearing the Complaint

The Complaint is substantially identical to a class action complaint that the Plaintiffs filed in the State Court prior to the filing of the petition (the "State Court Action"). Plaintiffs have filed a class proof of claim based upon the State Court Action. The Complaint appears to be Plaintiffs' attempt to liquidate their class proof of claim.

Title 28 U.S.C. § 1334(c)(1) provides in relevant part: "[N]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." In *Christensen v. Tucson Estates, Inc. (In re Tucson Estates)*, the Ninth Circuit set forth the factors the Court should consider in determining whether to permissively abstain:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

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CONT...

Parkridge Private School, Inc.

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- (9) the burden on [the bankruptcy court's] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of nondebtor parties.

912 F.2d 1162, 1167 (9th Cir. 1990).

Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551, 560 (Bankr. C.D. Cal. 2004).

In the Court's view, the most efficient way to resolve the Complaint is for the Court to lift the automatic stay to permit the State Court Action to proceed and to abstain from hearing the Complaint. The State Court Action is substantially identical to the Complaint. Abstention is appropriate because: (1) the Complaint asserts claims arising solely under nonbankruptcy law (factor two), (2) there is a related proceeding already commenced in state court (factor four), (3) the Plaintiffs have demanded a jury trial (factor eleven), and (4) abstention will not interfere with administration of the estate because Plaintiffs can prosecute the State Court Action to final judgment and then proceed with their class proof of claim (factor one).

By separate order, the Court will require Plaintiffs to show cause why the Court should not lift the automatic stay to permit the State Court Action to proceed and abstain from adjudicating the Complaint.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. Within seven days of the hearing, Parkridge shall submit an order denying the Motion that incorporates this tentative ruling by reference. The Court will prepare and enter the Order to Show Cause.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Parkridge Private School, Inc.

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Debtor(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Defendant(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Plaintiff(s):

Efrain Santos

Represented By
Eric C Morris

Evelyn Lambert

Represented By
Eric C Morris

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:18-15865 Fatemeh V. Mahdavi

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#103.00 Hearing

RE: [86] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Trustee's Notice of Motion and Motion to (1) Approve Agreement re Homestead Exemption; (2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, California Free and Clear of Liens and Claims, and (3) Pay Real Estate Brokers' Commissions; Memorandum of Points and Authorities, Declarations of Carolyn A. Dye and Zizi Pak, and Request for Judicial Notice in Support Thereof with Proof of Service. (D'Alba, Michael)

Docket 86

Tentative Ruling:

9/24/2019

For the reasons set forth below, the Sale Motion is GRANTED IN PART, with the exception of Provisions D and F.

Key Sale Terms:

- 1) Proposed purchaser: Abdulaziz M. Alathel or his nominee
- 2) Property for Sale: 1398 Davies Drive, Beverly Hills, CA 90210.
- 3) Purchase price: \$2,700,000
- 4) Overbids: The minimum overbid amount shall be \$2,710,000. Subsequent overbids shall be in increments of \$10,000.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion to (1) Approve Settlement Agreement Re Homestead Exemption; (2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and (3) Pay Real Estate Brokers' Commissions [Doc. No. 86] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 87]
 - b) Notice of Sale of Estate Property [Doc. No. 88]
- 2) The United States of America's Opposition to Trustee's Motion 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of

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- Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [filed by United States of America on behalf of IRS] [Doc. No. 95] (the "Opposition")
- 3) Trustee's 1) Reply to the United States of America's Opposition to, And 2) Supplement in Further Support of Motion to 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [Doc. No. 103] (the "Reply")
 - 4) Debtor Fatemeh V. Mahdavi's Reply to the United States of America's Opposition to, And 2) Supplement in Further Support of Motion to 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [Doc. No. 104] (the "Debtor's Reply")

I. Facts and Summary of Pleadings

Fatemeh Mahdavi (the "Debtor") filed a voluntary Chapter 7 petition on May 22, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell real property located at 1398 Davies Drive, Beverly Hills, CA 90210 (the "Property"). The Trustee also seeks approval of a settlement agreement (attached to the Motion as Exhibit A) with the Debtor resolving treatment of her homestead exemption following the proposed sale.

The Proposed Agreement on the Homestead Exemption

The Debtor claimed a homestead exemption in the amount of \$175,000 in the Property, which is the community property of the Debtor and her non-filing spouse. Reference is made to the judgment lien (the "Judgment Lien") of Davoud and Illiad Ashraf Por (collectively, "Gharenbaghi"), which currently impairs the Property's title. Pursuant to a prior court-approved agreement between the Trustee and Gharenbaghi, it was stipulated that the Judgment Lien would be subordinated to the payout of 1) all administrative expenses and 2) the costs of the sale. *See* Motion, Ex. 6. Further, the Trustee represents that at the current purchase price of \$2,700,000, there is an insufficient amount of equity from the Property's sale to pay out Debtor's homestead exemption and the Judgment Lien. To that effect, the Debtor and the Trustee entered into an agreement (the "Homestead Agreement") providing in relevant part as follows:

1. The Debtor accepts the sale of the Property for the amount of \$2,700,000, subject to overbids, which the Trustee requests herein;

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2. The Debtor will immediately seek to avoid the Judgement Lien to the extent it impairs her homestead exemption;
3. Following the sale of the Property, the Debtor shall accept \$95,000 in full satisfaction of her claimed homestead exemption;
4. The Trustee shall waive application of reinvestment procedures with respect to Debtor's homestead exemption.

See Motion, Ex. 1.

The Proposed Sale

The Trustee seeks authorization to sell the Property free and clear of liens, claims, and encumbrances, pursuant to §§ 363(b) and (f). The Trustee proposes the following treatment of the liens and encumbrances against the Property:

- 1) **Lien for real property taxes for fiscal year 2018–2019 (the "Property Tax Lien")**. The Trustee has paid all real property taxes accrued prior to the date of closing. The sale will be free and clear of this lien. In addition, the Trustee proposes to pay any undisputed real property taxes that become due for the fiscal year 2019-2020, currently estimated to be \$8,000, assuming that the Property is sold on or about early October. Disputed amounts, if any, will attach to the net sale proceeds.
- 2) **Deed of Trust in favor of ZB, N.A. dba California Bank & Trust, securing original indebtedness of \$367,500 (the "ZB DOT")**. The Trustee will pay through escrow all undisputed amounts owed on the ZB DOT, and any disputed amounts will attach to the net proceeds of the sale. The sale will be free and clear of the ZB DOT.
- 3) **Debtor's Homestead Exemption in the amount of \$175,000**. Provided the Homestead Agreement is approved by the Court, the Debtor will be paid pursuant to the terms therein.
- 4) **Judgment lien in the amount of \$1,289,722.22 in favor of Davoud Gharehbaghi and Iliad Ashraf Por**. The Judgment Lien is subject to the court-approved carve-out agreement (the "Carve-Out Agreement") [Doc. No. 50], which determines distribution of net sale proceeds to Gharehbaghi. Notwithstanding the terms of the Carve-Out Agreement, under the Homestead Agreement, Debtor will seek to avoid the Judgment Lien as it impairs her homestead exemption claim. If Debtor prevails on the avoidance motion,

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Trustee provides that the sale will be free and clear of the Judgment Lien as it will have been avoided. If Debtor does not prevail, Gharenbaghi will instead be paid according to the Carve-Out Agreement. Pursuant to the Carve-Out Agreement, Gharenbaghi may file a general, unsecured claim against the Debtor's estate to the extent net sale proceeds are insufficient to pay the Judgment Lien. The sale will either be free and clear of the Judgment Lien, or Gharenbaghi will be paid from the net sale proceeds.

- 5) **Judgment lien in the amount of \$754,265.74 in favor of Melissa Nourai and Parissa Nourai (the "Nourai Judgment")**. The sale will be free and clear of the Nourai Judgment. On June 14, 2019, the Trustee and the holders of the Nourai Judgment filed a stipulation (the "Nourai Stipulation"), which provides that the Nourai Judgment is deemed avoided pursuant to § 547 and preserved for the benefit of the bankruptcy estate pursuant to § 551.
- 6) **Lien for unsecured property taxes recorded by the Los Angeles County Tax Collector in the amount of \$127.73 (the "LA Tax Lien")**. The sale will be free and clear of this lien, because it was recorded subsequent to the filing of the petition in violation of the automatic stay and is therefore void *ab initio*.

The Trustee projects that after the above-liens are resolved, and the costs of sale are fully paid, the net proceeds totaling approximately \$176,514 will be largely consumed by Trustee's fees and the fees of professionals.

Opposition by the IRS

The Internal Revenue Service (the "IRS") filed an opposition on September 11, 2019, partially objecting to the Motion insofar as Trustee therein proposed to pay Debtor her homestead exemption ahead of an unsecured priority claim held by the IRS in the amount of \$389,874.89. The gravamen of the grounds asserted is that the Debtor's homestead exemption remains liable for accrued tax penalties under §§ 522(c) and 523(a) *inter alia*. The IRS further argues that the Motion was not properly served because the Trustee did not serve the U.S. Attorney's Office or the Attorney General pursuant to Federal Rules of Bankruptcy Procedure 9014(b) and 7004(b)(5). The IRS does not oppose the actual sale of the Property but instead requests the following: 1) payment of net sale funds on account of its priority claim, and 2) denial of the Trustee's proposal to pay Debtor her homestead exemption.

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Trustee's Reply

On September 18, 2019, the Trustee filed a Reply to the Opposition, contending that the preliminary title report of the Property (Motion, Ex. 2) does not indicate that the IRS in fact possesses any recorded lien or claim as to the Property. Moreover, the Trustee represents that following discussions with the United States Attorney, she understands that the IRS neither opposes the sale of the Property nor seeks to continue the Motion to a later date. To the extent that the Opposition concerns a dispute between Debtor and the IRS, the Trustee takes no position on the issue. However, the Trustee proposes that any order should include language instructing the Trustee to hold funds available for the Debtor's homestead exemption in a segregated account pending future resolution of such dispute.

The Debtor's Reply

The Debtor filed her own reply on September 18, 2019, agreeing with the Trustee's request to hold potential homestead exemption funds in a segregated account until future notice. The Debtor further justifies continuance of this hearing to have more time to mount an adequate defense of her rights to the homestead exemption. As to this argument, she provides a terse list of options she could potentially exercise in the future. Moreover, Debtor contends that it would be premature to determine the IRS's rights to the funds in question as her lien avoidance motion remains outstanding and may be opposed by Gharenbaghi [Note 1].

II. Findings and Conclusions

On a preliminary note, the Motion was not in compliance with Rules 9014(b) and 7004(b)(5) of the Federal Rules of Bankruptcy Procedure. Notwithstanding deficient, the IRS replied and did not address the notice issue.

A. The Homestead Agreement is Partially Approved

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With the exception of the provisions identified below, the Court determines that the Homestead Agreement is approved because it facilitates the sale of the Property, which is in the best interest of the creditors and consistent with the Trustee's statutory obligation to liquidate estate assets. The Court reserves approval of Provisions D and F of the Homestead Agreement, which relate to the \$95,000 payment to the Debtor on account of her homestead exemption. As discussed below, this issue will be determined on a later date, once the Debtor and the IRS have had an opportunity to submit supplemental briefing. Until such later date, the Homestead Agreement is partially approved.

B. The Proposed Sale is Approved

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Court approves the Trustee's proposed treatment of the liens and encumbrances against the Property, and finds that the Property may be sold free and clear of such liens and encumbrances as requested by the Trustee. Pursuant to § 363(f) (3), the sale is free and clear of the Property Tax Liens and the ZB DOT because the purchase price of the Property exceeds the aggregate value of such liens. The sale is free and clear of the LA Tax Lien because such lien is void *ab initio*, having been

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recorded in violation of the automatic stay. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992). To the extent that any funds are available to the Debtor for her homestead exemption, such funds are to be placed on a segregated account until final resolution of the IRS's claim to such funds. As a result, the sale is free and clear of the homestead exemption declaration. The sale is free and clear of the Judgment Lien because Gharenbaghi will only be entitled to recover net sale proceeds, if any, pursuant to the Carve-Out Agreement, and otherwise may file a claim for any unsecured portion thereof. *See Motion, Ex. 6*. In any case, Gharenbaghi has not filed any opposition to the Sale Motion. The sale is free and clear of the Nouraié Judgment, which has been deemed avoided pursuant to § 547 and has been preserved for the benefit of the bankruptcy estate pursuant to § 551, in accordance with the terms of the Nouraié Stipulation.

The Trustee is authorized to pay real estate brokers' commissions directly from escrow. Having reviewed the Declaration of Zizi Pak, the real estate broker who marketed the Property, the Court finds that proposed buyer Abdulaziz M. Alathel is a good faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be at \$2,710,000, with subsequent overbids to be increments of \$10,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

C. Further Briefing is Required to Resolve the IRS's Entitlement to the Disputed Sale Proceeds

The IRS argues that the Debtor's 2016 tax debts are not dischargeable under § 523(a)(1) and entitled to priority under §507(a)(8). On reply, the Debtor asks to postpone determination of this issue to a later date, once she has had the opportunity

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CONT... Fatemeh V. Mahdavi

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to review her options and properly contest the IRS's claim. The Court is amenable to the Debtor's request and agrees that adequate consideration of this issue requires supplemental briefing by Debtor and the IRS. The continuance of this issue to a later date is also appropriate in light of the Debtor's pending lien avoidance motion, which concerns the same funds and the homestead exemption at issue here. For the reasons set forth above, the Court instructs the Trustee to hold funds available for the Debtor's homestead exemption in a separate account pending an order from the Court resolving the dispute between the Debtor and the IRS.

III. Conclusion

Based upon the foregoing, the Homestead Agreement is PARTIALLY APPROVED, as set forth above, and the Sale Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

The dispute regarding the IRS's entitlement to funds originally earmarked for the Debtor's homestead exemption is CONTINUED to January 8, 2020, with the following briefing schedule: the IRS's Supplemental Opposition, if any, shall be filed on or before December 25, 2019; and the Debtor's Supplemental Reply, if any, shall be filed on or before January 1, 2020.

Note 1: As of September 23, 2019, Gharenbaghi has not filed any opposing papers to Debtor's lien avoidance motion.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

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9:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#1.00 Trial Date Set

RE: [16] Amended Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (RE: related document(s)1 Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.) filed by Plaintiff Manuel Ramirez). (Lomeli, Lydia R.)

Docket 16

***** VACATED *** REASON: OSC RE: DISMISSAL 10-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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9:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#2.00 Trial Date Set RE: [21] Amended Complaint 2nd Amended by Michael N Berke on behalf of Joseph Amin against Kami Emein. (Berke, Michael)

fr: 7-29-19

Docket 0

***** VACATED *** REASON: Cont'd to 1/27/2020 at 9:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Jacques Tushinsky Fox

Defendant(s):

Kami Emein

Represented By
TJ Fox

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Represented By
Uzzi O Raanan ESQ
Sonia Singh

**United States Bankruptcy Court
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Hearing Room 1568

9:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01429. Complaint by Wesley H. Avery, Chapter 7 Trustee of the Bankruptcy Estate of Jenny Melendez against Jenny Melendez, an individual, Clara E. Melendez. (Charge To Estate). Trustee's Complaint for: 1) A Declaratory Judgment Regarding Property of the Bankruptcy Estate; 2) Turnover; 3) Injunctive Relief; and 4) Sale of a Property in Which a Non-Debtor Asserts an Interest Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lin, Zi)

Docket 1

***** VACATED *** REASON: CONTINUED 4-27-20 AT 11:00 A.M. PER AMENDED COMPLAINT**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jenny Melendez

Represented By
Randolph R Ramirez

Defendant(s):

DOES 1-20

Pro Se

Clara E Melendez, an individual

Pro Se

Jenny Melendez, an individual

Pro Se

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

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CONT... Jenny Melendez

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 4-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden
Faye C Rasch

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#100.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1849

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#101.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 2144

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#102.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1881

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#103.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1882

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#104.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

Docket 1930

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#105.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

Docket 1949

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#106.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**
fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

Docket 1965

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#107.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 2058

***** VACATED *** REASON: PER ORDER ENTERED 9-24-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#108.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

Docket 1954

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#109.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1850

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#110.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1940

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#111.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1866

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#112.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
**AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1857

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#113.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1890

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#114.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1873

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#115.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**
fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

Docket 1863

***** VACATED *** REASON: PER ORDER ENTERED 9-24-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#115.10 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

Docket 0

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

2:19-17051 Marlon Camar Salamat and Daisy Anne Boiser Salamat

Chapter 7

#116.00 HearingRE: [24] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Toyota Sienna .

Docket 24

Tentative Ruling:

9/26/2019:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 30, 2019

Hearing Room 1568

10:00 AM

CONT... Marlon Camar Salamat and Daisy Anne Boiser Salamat Chapter 7

and appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marlon Camar Salamat

Represented By
Michelle A Marchisotto

Joint Debtor(s):

Daisy Anne Boiser Salamat

Represented By
Michelle A Marchisotto

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing

RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof

Docket 2995

***** VACATED *** REASON: CONTINUED 10-15-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19

Docket 2557

***** VACATED *** REASON: CONTINUED 10-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 2, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19

Docket 2558

***** VACATED *** REASON: CONTINUED 10-9-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 7, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#1.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18; 1-28-19; 4-1-19, 8-5-19

Docket 10

*** VACATED *** REASON: CONTINUED 10-8-19 AT 10:00 A.M.

Tentative Ruling:

3/27/2019

No appearances required. The tentative ruling is to take this matter off calendar. This is a continued hearing on Wells Fargo Bank, N.A.'s ("Movant") *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* [Doc. No. 10] (the "R/S Motion"). The chapter 7 Trustee, Jason M. Rund (the "Trustee") filed a timely opposition [Doc. No. 15]. This matter has been continued a number of times to afford the Trustee an opportunity to sell the real property that is the subject of the R/S Motion. To avoid unnecessary administrative costs of keeping this motion on calendar, the matter shall be taken off calendar. If the Trustee has not obtained approval of a sale of the subject property by August 31, 2019, Movant may re-notice a hearing on the R/S Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 7, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

9/20/2018

For the reasons stated below, the tentative ruling is to DENY the R/S Motion without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 10]
2. Trustee's Opposition to R/S Motion ("Trustee's Opposition") [Doc. No. 15]
3. As of the preparation of this tentative ruling, Movant has not filed a reply.

I. Facts and Summary of Pleadings

Motion

Rogelio and Carol Gonzalez (together, the "Debtors") filed this voluntary joint chapter 7 case on July 16, 2018. On August 30, 2018, creditor Wells Fargo Bank, N.A. ("Movant") filed a "Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 10] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property"). Movant asserts that cause exists to grant it relief from stay under § 362(d)(1) because the Debtors filed a Statement of Intention that indicates the Debtors' intent to surrender the Property ("Statement of Intention"). *See* Motion, Exhibit 8.

Movant also asserts that cause exists to grant it relief from stay under § 362(d)(2) because the Debtors have no equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case. In support, Movant states that the total debt on the Property is \$591,518.92 which is comprised of Movant's first priority deed of trust secured by a lien in the amount of \$248,386.30 and approximately fifteen other liens securing an approximate indebtedness of \$351,518.92. *See* Request for Judicial Notice, Doc No. 10, PDF p. 15. After factoring in 8% costs of sale (\$49,384.64), Movant contends that the total debt exceeds the Property's \$617,308 fair market value.

Opposition

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 7, 2019

Hearing Room 1568

10:00 AM

CONT...

Rogelio Gonzalez and Carol Gonzalez

Chapter 7

On September 10, 2018, the chapter 7 trustee filed an Opposition to the R/S Motion [Doc. No. 15] ("Trustee's Opposition"). The Trustee requests that the Court deny the R/S Motion as follows. First, the Trustee contends that Movant has not established sufficient cause for relief from stay under § 362(d)(1) because (i) Movant is adequately protected by an equity cushion of \$368,921.71 or 149%; and (ii) Debtors' Statement of Intention has no bearing on whether to grant Movant relief from stay because the Property is subject to administration by the Trustee pursuant to § 541.

Second, the Trustee contends that the Court should not grant Movant relief from stay pursuant to § 362(d)(2) because, using Movant's figures and assuming all the alleged liens are legitimate, the Debtors have approximately \$17,402.78 in equity in the Property. [NOTE 1] Additionally, the Trustee states that he is currently evaluating the validity of the other asserted liens on the Property and requests an opportunity to try to negotiate with those creditors for a consensual sale that might provide some benefit to the estate or pursue a sale free and clear of some or all those interests.

Reply

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based on Movant's figures, the Court finds that Movant is adequately protected by a 149% equity cushion.

The Court also finds that the Trustee has the better argument with respect to Debtors' Statement of Intention.

Based on the foregoing, the Court finds that Movant is not entitled to relief from stay under § 362(d)(1).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 7, 2019

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Since this is a chapter 7 case, it is undisputed that the Property is not necessary for an effective reorganization. Therefore, the Court must only determine whether the Debtors enjoy any equity in the Property. Using Movant's figures and deducting costs of sale, Debtors' \$100,000 homestead exemption, the Trustee's fees, and administrative claims, it appears unlikely that the Trustee will be able to administer the Property for the benefit of general unsecured creditors.

However, none of the purported junior lienholder filed a response to this R/S Motion. On balance, the Court is persuaded that it is premature to find that there is no equity in the Property given the relatively newness of this case and the lack of meaningful investigation by the Trustee into the validity of the junior liens.

III. Conclusion

The tentative ruling is to DENY the R/S Motion without prejudice.

The Trustee shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

NOTE 1: This figure represents the total equity in the Property prior to deducting any costs of sale or taking into consideration Debtors' \$100,000 homestead exemption.

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CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 7, 2019

Hearing Room 1568

10:00 AM

2:19-19111 EDGAR DELGADILLO and LESLY LOPEZ DE

Chapter 7

#2.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Jeep Cherokee, VIN No. 1C4PJLCB2GW128306 with Proof of Service.

Docket 12

Tentative Ruling:

10/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... EDGAR DELGADILLO and LESLY LOPEZ DE

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

EDGAR DELGADILLO

Represented By
Yvonne D'saachs

Joint Debtor(s):

LESLY LOPEZ DE DELGADILLO

Represented By
Yvonne D'saachs

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Monday, October 7, 2019

Hearing Room 1568

10:00 AM

2:19-20706 Maliya Martineau

Chapter 7

#3.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3033 Wilshire Boulevard #705 Los Angeles, CA 90010 . (Brisco, Todd)

Docket 7

Tentative Ruling:

10/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor allegedly continues to occupy the property after her residential lease went into default. The Movant filed an unlawful detainer action on June 24, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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CONT... Maliya Martineau

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

The Court further notes that Debtor's case was dismissed on October 1, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maliya Martineau

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 7, 2019

Hearing Room 1568

10:00 AM

2:19-19115 Edwin J Molina

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 NISSAN ARMADA, VIN # 5N1AA0ND8CN611569 . (Vanlochem, Michael)

Docket 9

Tentative Ruling:

10/3/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Edwin J Molina

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Edwin J Molina

Represented By
Neil R Hedtke

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [67] Motion For Summary Judgment as to First Claim for Relief in Plaintiff's
Complaint (Hilton, Lawrence)

FR. 6-4-19; 8-14-19; 9-17-19

Docket 67

***** VACATED *** REASON: PER ORDER ENTERED 9-24-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

Shaigan Ben Her, an individual

Represented By

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CONT... JW Wireless Inc.

Chapter 7

Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
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Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

- #2.00** Show Cause Hearing RE: [16] Amended Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (RE: related document(s)1 Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.) filed by Plaintiff Manuel Ramirez). (Lomeli, Lydia R.)

Docket 16

Tentative Ruling:

10/7/2019

For the reasons set forth below, this action is dismissed, with prejudice, for failure to prosecute.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute, Pursuant to Civil Rule 41(b) [Doc. No. 34] (the "Order to Show Cause")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 38]
- 2) Defendant's Response to Order to Show Cause Why this Action Should Not be Dismissed [Doc. No. 39]

I. Facts and Summary of Pleadings

On May 14, 2018, Manuel Ramirez (the "Plaintiff") filed this dischargeability complaint (the "Complaint") against Gabriel Axel Gutierrez Contreras (the "Defendant").

On February 21, 2019, the Court issued a *Scheduling Order* [Doc. No. 26] (the "Scheduling Order") which, among other things, set a Pretrial Conference for September 10, 2019, and required the parties to submit a Joint Pretrial Stipulation by no later than fourteen days prior to the Pretrial Conference. After the parties failed to timely submit the Joint Pretrial Stipulation, the Court issued an *Order to Comply with*

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CONT... GABRIEL AXEL GUTIRREZ CONTRERAS Chapter 7

Local Bankruptcy Rule 7016-1 Re: Pretrial and Trial Procedures [Doc. No. 31] (the "Order to Comply"). The Order to Comply directed the parties to submit the Joint Pretrial Stipulation, and warned them of the consequences of failing to do so:

The parties are further advised that that the Court views the Pretrial Conference as an indispensable component of the resolution of this litigation and strictly enforces compliance with the Local Bankruptcy Rules. A material default by the Plaintiff in complying with obligations regarding the preparation of the Joint Pretrial Stipulation will most likely result in dismissal of the action for failure to prosecute. *See Moneymaker v. CoBEN (In re Eisen)*, 31 F.3d 1447, 1451 (9th Cir. 1994) (dismissing action for failure to prosecute). A material default by the Defendant in fulfilling Defendant's corresponding obligations will most likely result in striking of the answer, entry of a default, and entry of judgment in favor of the Plaintiff. *See Hester v. Vision Airlines, Inc.*, 687 F.3d 1162, 1169 (9th Cir. 2012) (setting forth the factors the Court must consider before striking a pleading and declaring default).

Order to Comply at 2.

The Order to Comply specified the parties' obligations in the event that the parties could not agree upon the form of the Joint Pretrial Stipulation:

- 1) In the event that the parties cannot agree upon the form of the Joint Pretrial Stipulation, both parties must lodge separate proposed Pretrial Stipulations by no later than seven days prior to the Pretrial Conference. *See* LBR 7016-1(d) (2).
- 2) In the event the Defendant fails to cooperate with the Plaintiff in the preparation of the Joint Pretrial Stipulation per the requirements of LBR 7016-1(d), the Plaintiff must lodge a proposed Pretrial Stipulation, accompanied by a declaration asserting Defendant's failure to cooperate, by no later than seven days prior to the Pretrial Conference. *See* LBR 7016-1(e)(1).

Order to Comply at 1–2.

Notwithstanding the issuance of the Order to Comply, the parties failed to submit either a Joint Pretrial Stipulation or separate proposed Pretrial Stipulations.

On September 10, 2019, the Court issued an *Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute*,

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CONT... **GABRIEL AXEL GUTIRREZ CONTRERAS** **Chapter 7**

Pursuant to Civil Rule 41(b) [Doc. No. 34] (the "Order to Show Cause"). Plaintiff has not responded to the Order to Show Cause. Defendant filed a response requesting that the Complaint be dismissed.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Moneymaker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

As set forth below, application of the *Eisen* factors supports dismissal of the action for failure to prosecute.

1. Public's Interest in Expeditious Resolution of Litigation

As the Ninth Circuit has explained, "[t]he public's interest in expeditious resolution of litigation always favors dismissal." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). By failing to comply with his obligations regarding the submission of the Pretrial Stipulation, Plaintiff has impeded the expeditious resolution of this action. This factor favors dismissal.

2. The Court's Need to Manage its Docket

Courts have the "power to manage their dockets without being subject to the endless vexatious noncompliance of litigants" *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), *as amended* (May 22, 1992). As discussed above, Plaintiff's failure to fulfill his responsibilities regarding the Pretrial Stipulation has delayed resolution of this action, and has consequently placed an additional burden upon the Court's docket. This factor favors dismissal.

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CONT... **GABRIEL AXEL GUTIRREZ CONTRERAS**

Chapter 7

3. The Risk of Prejudice to the Diligent Party

A diligent party suffers prejudice if the noncompliant party's actions impair the diligent party's "ability to go to trial or threaten to interfere with the rightful decision of the case." *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006).

As the Court advised both parties in the Scheduling Order, the Pretrial Conference is an indispensable component of the resolution of the litigation. Plaintiff's failure to participate in the Pretrial Conference has impaired Defendant's ability to go to trial and has interfered with the Court's ability to adjudicate this matter. This factor weighs in favor of dismissal.

4. The Public Policy Favoring the Disposition of Cases on Their Merits

Normally, "the public policy favoring disposition of cases on their merits strongly counsels against dismissal." *In re PPA Prods.*, 460 F.3d at 1228. However, "a case that is stalled or unreasonably delayed by a party's failure to comply with deadlines and discovery obligations cannot move forward toward resolution on the merits." *Id.* This factor therefore "lends little support" to a party "whose conduct impedes progress in that direction." *Id.* (citations and quotations omitted). In other words, parties have a responsibility "to refrain from dilatory and evasive tactics." *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991).

Plaintiff failed to participate in the Pretrial Conference. Plaintiff has failed to respond to the Order to Show Cause. Plaintiff's conduct has prevented this case from moving forward. This factor favors dismissal.

5. The Availability of Less Drastic Sanctions

The Court finds that less drastic sanctions would not adequately remediate Plaintiff's non-compliance. Prior to the Pretrial Conference, the Court warned Plaintiff that failure to fulfill his obligations regarding the Pretrial Stipulation could result in dismissal. Notwithstanding this warning, Plaintiff failed to participate in the Pretrial Conference. Plaintiff has failed to submit any response to the Order to Show Cause. This factor weighs in favor of dismissal.

III. Conclusion

Based upon the foregoing, this action is dismissed, with prejudice, for failure to prosecute, pursuant to Civil Rule 41(b). The Court will prepare and enter an appropriate order.

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CONT... GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#3.00 HearingRE: [85] Application for Compensation of Interim Fees and/or Expenses for LEA Accountancy, LLP, Accountant, Period: 8/2/2018 to 8/12/2019, Fee: \$19,436.00, Expenses: \$26.40.

Docket 85

Tentative Ruling:

10/7/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below.

Fees: \$19,436

Expenses: \$26.40

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

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10:00 AM

CONT...

Fatemeh V. Mahdavi

Michael G D'Alba

Chapter 7

**United States Bankruptcy Court
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10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#4.00 HearingRE: [96] Application for Compensation First Interim Application For Award Of Compensation And Reimbursement Of Expenses Of Danning, Gill, Diamond & Kollitz, LLP, As General Counsel To Chapter 7 Trustee, Declarations Of Eric P. Israel and Carolyn A. Dye In Support Thereof, with Proof of Service for Danning Gill Diamond & Kollitz LLP, General Counsel, Period: 5/25/2018 to 7/31/2019, Fee: \$186,378.30, Expenses: \$9,046.76.

Docket 96

Tentative Ruling:

10/7/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below.

Fees: \$100,000 approved and may be paid at this time on an interim basis, subject to the caveat that applicant may be paid up to \$149,102.64 on an interim basis upon submitting a declaration attesting to the closing of the Davies Property sale.

Expenses: \$9,046.76 approved in full and to be paid forthwith, on an interim basis.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By

**United States Bankruptcy Court
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Tuesday, October 8, 2019

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10:00 AM

CONT... Fatemeh V. Mahdavi

Chapter 7

David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

#5.00 HearingRE: [98] Application for Compensation of Statutory Fees (First Interim). (Dye (TR), Carolyn)

Docket 98

Tentative Ruling:

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below.

Fees: \$75,000

Payment of expenses was not requested.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
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Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#6.00 HearingRE: [66] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Trustees Notice Of Motion And Motion: (1) To Approve Sale Of Real Property Commonly Known As 47 Oak Cliff Drive, Pomona, California Free And Clear Of Liens And Claims, (2) To Authorize Payment Of Real Estate Brokers Commissions, And (3) To Fix Payment On Debtors Homestead Exemption Under 11 U.S.C. § 522(F); Memorandum Of Points And Authorities, Declarations Of Brad D. Krasnoff And Pamela Temple, And Request For Judicial Notice In Support Thereof, With Proof of Service. (Singh, Sonia)

Docket 66

Tentative Ruling:

10/7/2019

For the reasons set forth below, the IRS' Opposition to the Sale Motion is **OVERRULED**. The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchasers: Elysa and Kevin Thangchaipinyokul
 - 2) Property for sale: 47 Oak Cliff Drive, Pomona, CA 91766
 - 3) Purchase price: \$540,000
 - 4) Overbids: The initial overbid shall be \$550,000. Subsequent overbids shall be in increments of \$10,000, subject to adjustment by the Court to facilitate bidding.
- [Note 1]**

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion: (1) To Approve Sale of Real Property Commonly Known as 47 Oak Cliff Drive, Pomona, California Free and Clear of Liens and Claims, (2) To Authorize Payment of Real Estate Brokers' Commissions, and (3) To Fix Payment on Debtors' Homestead Exemption Under 11 U.S.C. § 522(f) [Doc. No. 66] (the "Sale Motion")
 - a) Trustee's Notice of [Sale Motion] [Doc. No. 67]
 - b) Notice of Sale of Estate Property [Doc. No. 68]

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- 2) United States' Opposition to [Sale Motion] [Doc. No. 75] (the "Opposition")
- 3) Trustee's Reply Memorandum of Points and Authorities in Support of [Sale Motion] [Doc. No. 81]
- 4) United States' Sur-Reply to Trustee's Reply in Support of [Sale Motion] [Doc. No. 82]
- 5) Unilateral Status Report Re: Motion of Wells Fargo Bank, N.A. for Relief from the Automatic Stay [Doc. No. 80]

I. Facts and Summary of Pleadings

Rogelio and Carol Gonzalez (the "Debtors") filed a joint voluntary Chapter 7 petition on July 16, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property") to Elysa and Kevin Thangchaipinyokul (the "Buyers"). The purchase price is \$540,000, and the sale is subject to overbids.

On August 30, 2018, Wells Fargo Bank, N.A. ("Wells Fargo") moved for relief from stay with respect to the Property. Wells Fargo subsequently assigned its loan against the Property to Specialized Loan Servicing, LLC ("Specialized Loan"). To enable the Trustee to complete the sale of the Property, the stay relief motion has been continued four times pursuant to stipulation.

The Trustee seeks authorization to sell the Property free and clear of liens, claims, and encumbrances, pursuant to §§ 363(b) and (f) and 724(a) and (b). The Trustee proposes the following treatment of the liens and encumbrances against the Property:

- 1) **Deed of trust recorded on March 19, 2004, securing an original obligation of \$240,000, in favor of Mortgage Electronic Registration Systems, and subsequently assigned to Specialized Loan.** Undisputed sums owed to Specialized Loan will be paid in full through escrow.
- 2) **Deed of trust recorded on November 27, 2006, securing an original obligation of \$24,392.86, in favor of Walters Wholesale Electric Co. ("Walters").** Undisputed sums owed to Walters will be paid in full through escrow.
- 3) **State tax lien recorded on March 18, 2010, securing an original obligation of \$12,249.22 in favor of the Franchise Tax Board (the "FTB").** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).

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- 4) **Abstract of judgment recorded on April 20, 2011, securing an original obligation of \$3,084.47, in favor of Citibank (South Dakota) N.A. ("Citibank").** Undisputed sums owed to Citibank will be paid in full through escrow.
- 5) **Lien recorded on August 4, 2011, securing an original obligation of \$10,710.19 in favor of the State of California Employment Development Department (the "EDD").** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).
- 6) **Federal tax lien recorded on August 9, 2011, securing an original obligation of \$4,669.42 in favor of the United States of America, Department of the Treasury, Internal Revenue Service (the "IRS").** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).
- 7) **State tax lien recorded on August 18, 2011, securing an original obligation of \$1,956.53, in favor of the FTB.** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).
- 8) **Federal tax lien recorded on March 8, 2012, securing an original obligation of \$2,454.84, in favor of the IRS.** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).
- 9) **Federal tax lien recorded on December 10, 2012, securing an original obligation of \$70,241.21, in favor of the IRS.** The lien will attach to a like amount of the net sale proceeds, and will be treated pursuant to § 724(b), with the exception of penalties, which shall be avoided and preserved for the estate pursuant to § 724(a).
- 10) **Abstract of judgment recorded on October 18, 2013, securing an original obligation of \$6,072.26, in favor of Midland Funding LLC ("Midland").** Undisputed sums owed to Midland will be paid in full through escrow.
- 11) **Deed of trust recorded on November 5, 2014, securing an original obligation of \$55,000, in favor of Crossroads Travel Center, LLC**

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("Crossroads"). To the extent funds are available after payment of senior liens, undisputed sums owed to Crossroads will be paid through escrow.

- 12) **Abstract of judgment recorded on May 5, 2015, securing an obligation of \$16,041.17, in favor of Walters.** This sum asserted by Walters will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.
- 13) **State tax lien recorded on May 18, 2015, securing an original obligation of \$20,765.03, in favor of the FTB.** This sum asserted by the FTB will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.
- 14) **Abstract of judgment recorded on September 29, 2015, securing an original obligation of \$118,358.60, in favor of Creditors Adjustment Bureau, Inc. dba CAB-LCF ("Creditors").** This sum asserted by Creditors will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.
- 15) **State tax lien recorded on November 16, 2018, securing an original obligation of \$4,002.88, in favor of the FTB.** This sum asserted by the FTB will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.
- 16) **State tax lien recorded on January 24, 2018, securing an original obligation of \$3,272.21, in favor of the FTB.** This sum asserted by the FTB will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.
- 17) **State tax lien recorded on January 24, 2018, securing an original obligation of \$9,003.22, in favor of the FTB.** This sum asserted by the FTB will not be paid because there is insufficient equity in the Property, and therefore this is not an allowed secured claim.

The Trustee estimates that sales proceeds in the estimated amount of \$139,310.03 will be distributed in accordance with § 724(b). The Trustee estimates that tax penalties in the estimated amount of \$34,401.97 will be avoided pursuant to § 724(a); these funds will be used to pay the claims of creditors and the expenses of administration. The Trustee notes that there is insufficient equity in the Property for the Debtors to receive the homestead exemption they claimed in the amount of \$100,000. The Trustee requests that payment of the Debtors' homestead exemption be limited to whatever judgment liens the Debtors can avoid under § 522(f). The Trustee

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requests that the Court set a deadline of November 1, 2019 for the Debtors to file a § 522(f) motion.

The IRS' Opposition to the Sale Motion

The IRS opposes the Sale Motion, and makes the following arguments in support of its Opposition:

The Property cannot be sold free and clear of the IRS' tax lien under § 363(f). Section 363(f) does not apply because California law does not allow the sale free and clear of the IRS' liens. *See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 37 (9th B.A.P. Cir. 2008) (citing from *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 438, 129 Cal. Rptr. 436 (2003)).

Section 363(f)(3) is not applicable. Under § 363(f)(3), the sales price must exceed the aggregate value of all liens against the Property. *Clear Channel*, 391 B.R. at 39–41. The aggregate value of all liens—\$768,621.73—exceeds the sales price of \$540,000.

Section 363(f)(4) is not applicable. Under § 363(f)(4), the Property can be sold free and clear of a lien if there is a bona fide dispute as to the validity of the lien. The IRS agrees that pursuant to § 724(a) and § 726(a)(4), the Trustee may avoid the IRS' lien to the extent that it pertains to tax penalties. Consequently, there is no bona fide dispute pursuant to § 363(f)(4).

Section 363(f)(5) is not applicable. Under § 363(f)(5), the Property may be sold free and clear of a lien if the lienholder “could be compelled in a legal or equitable proceeding to accept a money satisfaction” of its lien. The Trustee has not identified a legal or equitable proceeding in which the IRS could be compelled to release its lien for less than payment in full.

In the event the Court approves the sale, the Court must provide adequate protection of the IRS' liens by ordering that the liens attach to the proceeds of the sale.

The Trustee's reliance on § 724(b) as authority for the sale is misplaced. Section 724(b) permits the subordination of tax liens to certain administrative expenses. “As is patently obvious, however, the plain language of § 724 does not separately authorize sale of estate property. Instead, it sets forth a mandatory distribution scheme after an otherwise already authorized sale has been conducted. Section 363 is the only basis for authorizing Trustee to sell estate property.”

Jubber v. Bird (In re Bird), 577 B.R. 365, 385 (B.A.P. 10th Cir. 2017). As discussed

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above, the Trustee has failed to establish that the sale may be free and clear of the IRS' lien under § 363.

In addition, pursuant to § 724(e), the Trustee must exhaust unencumbered assets of the estate before subordinating the IRS' federal tax lien. The Trustee has not shown that he has administered the estate's other unencumbered assets. Further, any motion to subordinate the IRS' tax lien is premature. Unless the administrative expenses and priority claims are less than the IRS' tax lien, the estate is being administered primarily for the benefit of the Trustee, his professionals, and the IRS as a secured creditor. Because the amounts of administrative and priority claims are not yet known, it is not clear whether subordination is necessary.

Finally, pursuant to § 522(c)(2)(B), the Debtors' homestead exemption is liable for payment of the IRS' tax lien. Therefore, the IRS must receive the funds that would otherwise be paid to the Debtors on account of their homestead exemption.

The Trustee's Reply to the IRS' Opposition

The Trustee makes the following arguments in Reply to the IRS' Opposition:

Contrary to the IRS' argument, the sale is authorized under § 363(f)(5). As explained by the court in *In re Healthco Int'l, Inc.*:

There is another reason why subparagraph (f)(5) is satisfied here. The interest in question is a tax lien. Section 724(b), discussed in full below, subordinates tax liens to administrative expense priority debt and liens which are otherwise junior to the tax lien. As shall be seen, the subordination can be a full or partial subordination. That means the County could be compelled to accept a money satisfaction of its interest by payment of less than the full amount of the debt.

Healthco, 174 B.R. 174, 177 (Bankr. D. Mass. 1994).

The IRS is not entitled to have the full amount of its tax lien attach to the sales proceeds as a form of adequate protection. If the IRS were given adequate protection for the full amount of its liens, this would effectively negate § 724(b). Section 724(b) is an exception to the general requirement that lienholders be provided adequate protection. *See In re A.G. Van Metre, Jr., Inc.*, 155 B.R. 118, 121 (Bankr. E.D. Va. 1993), *subsequently aff'd*, 16 F.3d 414 (4th Cir. 1994) (holding that although § 363(e) generally requires that lienholders be provided adequate protection, "§ 724(b) sets forth a definite exception to this general rule in cases involving statutory tax liens").

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The IRS contends that the Trustee must exhaust unencumbered estate assets before subordinating the IRS' tax liens. The Trustee is not aware of any other unencumbered assets and/or any other secured creditors to surcharge.

The IRS states that any motion to subordinate its tax liens is premature. The Sale Motion does not seek subordination of the IRS' tax liens. The Sale Motion requests that the IRS' liens attach to the net sales proceeds. It does not seek authorization to distribute any proceeds, allow fees, or determine priority regarding the sales proceeds subject to the IRS' liens.

At the outset of the case, an IRS Revenue Officer sent a letter to the Trustee, advising that the IRS would support a sale of the Property. In a telephone conversation conducted on March 29, 2019, counsel for the IRS advised the Trustee's counsel that the Trustee's proposed carve-out stipulation regarding the sale was unnecessary, because the Trustee could avoid the penalty portions of the IRS' tax liens. The Trustee relied upon the IRS' consent to the sale in employing a real estate broker who marketed the Property. The IRS should be estopped from changing its position and opposing the Sale Motion.

The IRS' Sur-Reply to the Trustee's Reply

The IRS filed a Sur-Reply to the Trustee's Reply, in which the IRS makes the following arguments:

The Court should consider the IRS' Sur-Reply to permit the IRS to respond to arguments that the Trustee raised for the first time in the Reply.

The letter sent by the IRS' Revenue Officer to the Trustee does not constitute "consent" to the sale for purposes of § 363(f)(2). The letter generally supported a sale of the Property, if such a sale would pay in full the IRS' claim. The letter did not consent to a specific sale with specific terms. The proposed sale does not provide for full payment of the IRS' claim. Consequently, the letter does not constitute consent to the sale proposed in the Sale Motion.

II. Findings and Conclusions

A. The IRS is Not Estopped from Opposing the Sale Motion

Although the Local Bankruptcy Rules do not authorize the filing of a Sur-Reply, the Court will consider the IRS' Sur-Reply. Absent consideration of the Sur-Reply, the IRS would be prevented from responding to arguments that the Trustee raised for the first time in his Reply.

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The letter sent by the IRS to the Trustee does not constitute consent to the sale for purposes of § 363(f)(2). The letter provides in relevant part (emphasis added):

The IRS would support your sale of the debtor’s personal residence, which appears to have more than sufficient equity to pay the primary mortgage holder *and the Internal Revenue Service in full*, with sufficient funds remaining that would allow you to make a meaningful distribution to other unsecured creditors.

Letter from IRS to the Trustee dated August 13, 2018 [Doc. No. 81, Ex. 7].

In the letter, the IRS expressed its support for a sale that would generate sufficient proceeds to pay its claim in full. The sale at issue will result in payment in full of the IRS’ claim. The letter does not constitute consent to the sale by the IRS for purposes of § 363(f)(2). There is no merit to the Trustee’s contention that the IRS should be estopped from opposing the Sale Motion.

In support of his estoppel argument, the Trustee also submits a declaration from his counsel regarding remarks allegedly made by the IRS’ counsel in a conversation with the Trustee’s counsel that took place on March 29, 2019. According to the declaration, counsel for the IRS advised the Trustee’s counsel that a carve-out stipulation with the IRS was unnecessary because the Trustee could avoid the penalty portions of the IRS tax liens. The declaration constitutes inadmissible hearsay, because it is offered to establish the truth of certain out-of-court statements allegedly made to the Trustee’s counsel by counsel to the IRS. The Court does not consider the declaration.

B. The Trustee is Authorized to Sell the Property, Free and Clear of the IRS’ Tax Lien, Pursuant to §§ 363(f)(5) and 724(b)

Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest “could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

In *In re Healthco Int’l, Inc.*, the court held that § 724(b) was a legal proceeding under which the holder of a tax lien “could be compelled to accept a money satisfaction of its interest by payment of less than the full amount of the debt.” *Healthco*, 174 B.R. 174, 177 (Bankr. D. Mass. 1994). Under § 724(b)(2), the Trustee is authorized to subordinate a tax lien to administrative expenses, to the extent of the amount of the lien. The operation of § 724(b)(2) “falls squarely within the language of

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§ 363(f)(5), inasmuch as it creates a mechanism by which lien creditors are compelled to receive less than full payment for their interest.” *In re Grand Slam U.S.A., Inc.*, 178 B.R. 460, 464 (E.D. Mich. 1995).

Here, the IRS holds a tax lien of the type that is subject to subordination under § 724(b)(2). Accordingly, the Trustee may sell the Property free and clear of the IRS’ tax lien pursuant to § 363(f)(5).

Section 724(e) requires that the Trustee exhaust unencumbered assets of the estate before subordinating a tax lien under § 724(b). As the estate has no unencumbered assets aside from the Property, the Court finds that the Trustee has satisfied the requirements of § 724(e).

The non-penalty portion of the IRS’ tax lien shall attach to the net proceeds of the sale, to be handled in accordance with § 724(b). Such treatment provides sufficient adequate protection to the IRS. *See In re A.G. Van Metre, Jr., Inc.*, 155 B.R. 118, 121 (Bankr. E.D. Va. 1993), *subsequently aff’d*, 16 F.3d 414 (4th Cir. 1994) (holding that treatment of statutory tax liens in accordance with § 724(b) does not violate the adequate protection requirement of § 363(e)).

C. The Trustee May Sell the Property Free and Clear of Liens Notwithstanding the Fact that the Aggregate Face Value of the Liens Exceeds the Proposed Purchase Price

In *Clear Channel Outdoor, Inc. v. Nancy Knupfer (In re PW, LLC)*, the Ninth Circuit Bankruptcy Appellate Panel (the “BAP”) held that property could not be sold free and clear of liens under § 363(f)(3) where the face value of the liens exceeded the sales price. *Clear Channel*, 391 B.R. 25, 39 (B.A.P. 9th Cir. 2008). Here, the face value of the liens against the Property is \$768,621.73, well in excess of the proposed sales price of \$540,000. If the Court were to follow *Clear Channel*, the sale could not be approved.

BAP decisions are not binding upon Bankruptcy Courts within the same judicial district. *In re Arnold*, 471 B.R. 578, 589–90 (Bankr. C.D. Cal. 2012). The Court declines to follow *Clear Channel*. Instead, the Court follows those cases holding that property may be sold free and clear of liens, provided that the sales price exceeds the economic value of all the liens. *See In re Beker Indus., Inc.*, 63 B.R. 474, 477 (Bankr. S.D.N.Y. 1986); *In re Collins*, 180 B.R. 447, 450–51 (Bankr. E.D. Va. 1995); *In re Terrace Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. 1989).

Based on the fact that the Property has been marketed by a qualified real estate broker, the Court finds that the proposed sales price of \$540,000 is equal to the

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Property's fair market value. In such circumstances, the sales price by definition exceeds the economic value of the liens. Accordingly, the Property may be sold free and clear of liens pursuant to § 363(f)(3).

D. The Debtors Must File Any § 522(f) Motion By No Later Than November 1, 2019

Pursuant to the Trustee's request, the Court will require that the Debtors file any § 522(f) Motion by no later than November 1, 2019, or be forever barred from doing so. A deadline for the filing of a § 522(f) Motion is necessary to enable the Trustee to distribute the Property's net sales proceeds.

However, the Court notes that pursuant to § 522(c)(2)(B), any funds to which the Debtors are entitled on account of their homestead exemption remain liable for the IRS' tax liens. Therefore, the Debtors will not be entitled to be paid any funds on account of their homestead exemption even if they prevail on a § 522(f) Motion. Instead, such funds must be paid to the IRS.

E. The Trustee's Proposed Treatment of Liens and Encumbrances Against the Property is Approved

The Court approves the Trustee's proposed treatment of liens and encumbrances against the Property. Liens and encumbrances that are out-of-the money are not entitled to be paid through escrow, as the holders of such liens and encumbrances do not possess allowed secured claims. *See* § 506(a).

F. Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid shall be \$550,000, with subsequent overbids to be increments of \$10,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Because the IRS has objected to the Sale Motion, the Court declines to waive the stay imposed by Bankruptcy Rule 6004(h).

Having reviewed the declaration of Pamela Temple, the Court finds that the Buyers are good-faith purchasers entitled to the protections of § 363(m). In the event that an

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overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

G. The Stay Relief Motion is Denied as Moot

On August 30, 2018, Wells Fargo Bank, N.A. ("Wells Fargo") moved for relief from stay with respect to the Property. Wells Fargo subsequently assigned its loan against the Property to Specialized Loan. The Trustee proposes to pay through escrow all undisputed sums owed to Specialized Loan. In view of the Court's approval of the sale, the motion for stay relief is DENIED as moot.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED and the Motion for Stay Relief is DENIED as moot. Within seven days of the hearing, the Trustee shall submit orders on both motions, which shall incorporate this tentative ruling by reference.

Note 1

The Court has adjusted the overbid increment proposed by the Trustee.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Kerry P O'Brien

Joint Debtor(s):

Carol Gonzalez

Represented By
Kerry P O'Brien

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh
Eric P Israel

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#7.00 Status Hearing RE: [73] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 72). (united states trustee (pg))

Docket 73

Tentative Ruling:

10/7/2019

See Cal. No. 10, incorporated in full by reference.

Party Information

Debtor(s):

Farid Nikravan

Represented By
Kian Mottahedeh

Trustee(s):

John J Menchaca (TR)

Represented By
Aram Ordubegian
Christopher K.S. Wong
M Douglas Flahaut

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#8.00 APPLICANT: Arent Fox, Attorney for Trustee

Hearing re [72] and [73] Trustee's Final Report and Applications for Compensation

Docket 70

Tentative Ruling:

10/7/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$16,918.50, but payment shall be limited to \$8,677.96 per Trustee's request [*see* Doc. No. 72]

Expenses: \$434.87, but payment shall be limited to \$223.06 per Trustee's request [*see* Doc. No. 72]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Farid Nikravan

Represented By
Kian Mottahedeh

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Trustee(s):

John J Menchaca (TR)

Represented By
Aram Ordubegian
Christopher K.S. Wong
M Douglas Flahaut

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#9.00 APPLICANT: Menchaca and Company, Accountant for Trustee

Hearing re [72] and [73] Trustee's Final Report and Applications for
Compensation

Docket 70

Tentative Ruling:

10/7/2019

See Cal. No. 10, incorporated in full by reference.

Party Information

Debtor(s):

Farid Nikravan

Represented By
Kian Mottahedeh

Trustee(s):

John J Menchaca (TR)

Represented By
Aram Ordubegian
Christopher K.S. Wong
M Douglas Flahaut

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#10.00 APPLICANT: John J. Menchaca, Trustee

Hearing re [72] and [73] Trustee's Final Report and Applications for Compensation

Docket 70

Tentative Ruling:

10/7/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$2,050, but payment shall be limited to \$1,051.50 per Trustee's request [see Doc. No. 72]

Total Expenses: \$92.58, but payment shall be limited to \$47.48 per Trustee's request [see Doc. No. 72]

Total Fees for Trustee's Accountant: Fees of \$1,000 previously paid on an interim basis [see Doc. No. 65] are now deemed final.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Debtor(s):

Farid Nikravan

Represented By
Kian Mottahedeh

Trustee(s):

John J Menchaca (TR)

Represented By
Aram Ordubegian
Christopher K.S. Wong
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2:19-11721 Pyramid Auto Transport Inc

Chapter 7

#11.00 Status Hearing RE: [22] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 21). (united states trustee (pg))

Docket 22

Tentative Ruling:

10/7/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$2,235.29 [*see* Doc. No. 21]

Total Expenses: \$51.95 [*see* Doc. No. 21]

Total Fees for Tax Preparer: Fees of \$1,000 previously paid on an interim basis [*see* Doc. No. 16] are now deemed final.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pyramid Auto Transport Inc

Represented By
Marc A Goldbach

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

CONT... Pyramid Auto Transport Inc

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19; 8-7-19; 9-4-19

Docket 2579

*** VACATED *** REASON: CONTINUED 10-22-19 AT 10:00 A.M.

Tentative Ruling:

10/7/2019

Continued to October 22, 2019, at 10:00 a.m., per stipulation.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:19-16078 David Christopher Brady

Chapter 11

#13.00 Hearing re [44] and [36] and [37] Objection to Debtor's Claim of Exemptions Filed by Creditor Banc of California, National Association

Docket 0

*** VACATED *** REASON: CONTINUED 10-23-19 AT 11:00 A.M.

Tentative Ruling:

10/7/2019

No appearances are required. The Court hereby orders the hearing on *Secured Creditor Banc of California, National Association's Objection to Claimed Exemptions* [Doc. No. 37] is continued from October 8, 2019 at 10:00 a.m. to October 23, 2019 at 11:00 a.m. pursuant to the stipulation between Debtor and the Secured Creditor [Doc. No. 56].

Party Information

Debtor(s):

David Christopher Brady

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:19-16549 Lynn M. Vargas

Chapter 11

#14.00 Hearing
RE: [30] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon)

fr. 9-10-19

Docket 30

***** VACATED *** REASON: WITHDRAWAL FILED 9-27-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lynn M. Vargas

Represented By
Rosendo Gonzalez
Hatty K Yip

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#15.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18;
8-14-18; 2-12-19; 6-18-19; 9-18-19; 9-24-19

Docket 0

Tentative Ruling:

10/7/2019

Tentative Ruling:

Appearances are required. This is a post-confirmation status conference. Counsel for Debtor and secured creditor PHH Mortgage (collectively, the "Parties") appeared at the September 24, 2019 post-confirmation status conference and advised the Court that they had tentatively settled an outstanding accounting dispute. However, Debtor had delayed in returning a signed copy of the settlement agreement. Noting this matter's protracted post-confirmation history, the Court directed the Parties to finalize any tentative settlement agreement and file an order requesting final decree and discharge no later than October 8, 2019, otherwise the case would be dismissed forthwith with a bar to refile. As of the date of this tentative ruling, there is nothing to show that the settlement agreement has been yet executed.

For the reasons set forth above, it is hereby ORDERED that an order summarily dismissing this case shall be entered, unless the Parties demonstrate that the settlement agreement has been executed and an order for final decree and discharge will be filed without delay.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

CONT... **Sondra Derderian**
before the hearing.

Chapter 11

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 8, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#16.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18; 1-28-19; 4-1-19, 8-5-19; 10-7-19

Docket 10

Tentative Ruling:

10/7/2019

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#1.00 APPLICANT: Danning Gill Diamond & Kollitz, Attorney

Hearing re [179] and [180] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/8/2019

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (fees previously awarded on an interim basis are now confirmed as final):

Fees: \$228,361.50 (consisting of \$152,611.00 awarded on an interim basis on December 21, 2018 [Doc. No. 131] and \$75,750.50 sought in connection with this application)

Expenses: \$11,822.65 (consisting of \$9,598.10 awarded on an interim basis on December 21, 2018 [Doc. No. 131] and \$2,224.55 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Charity J Manee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

CONT... Anne Lan Peterson

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#2.00 APPLICANT: Brad D Krasnoff, Trustee

Hearing re [179] and [180] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/8/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$32,250.00

Total Expenses: \$946.59

U.S. Bankruptcy Court charges: \$350.00

Payment to Anne Lan Peterson: \$124,668.21 [**Note 1**]

Note 1

Pursuant to the *Order Granting Trustee's Motion for Approval of Final Distributions from Proceeds of Sale of Community Property* [Doc. No. 154] (the "Distribution Order"), the Court approves the proposed payment of \$124,668.21 to Anne Lan Peterson (the "Debtor"). As set forth in the Distribution Order, the Debtor is entitled to be paid her spousal support lien from Ronald Peterson's share of the sales proceeds of the real property commonly known as 359 W. Langston Street, Upland, CA 91786 (the "Property"). The amount of the Debtor's spousal support lien, as of November 1, 2019 (the projected date of the Trustee's final distribution) is \$129,605.00. Ronald's share of the sales proceeds is \$124,668.21. Therefore, the Debtor is entitled to be paid the entirety of Ronald's share of the sales proceeds.

No appearance is required if submitting on the court's tentative ruling. If you

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

CONT... Anne Lan Peterson

Chapter 7

intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Charity J Manee

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#3.00 APPLICANT: LEA Accountancy, Accountant

Hearing re [179] and [180] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/8/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$10,582.50

Expenses: \$193.76

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Charity J Manee

Trustee(s):

Brad D Krasnoff (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

CONT...

Anne Lan Peterson

Eric P Israel
Zev Shechtman

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#4.00 CHARGES: United States Bankruptcy Court

Hearing re [179] and [180] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/8/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Charity J Manee

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#5.00 OTHER: Anne Lan Peterson

Hearing re [179] and [180] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/8/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Charity J Manee

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NANTWORKS, LLC.**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 9-25-19

Docket 2157

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19

Docket 2558

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19

Docket 2557

***** VACATED *** REASON: CONTINUED 10-16-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 9, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [2157] Cure Objection Asserted by **NANTHEALTH, INC.**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 9-25-19

Docket 2157

***** VACATED *** REASON: PER ORDER ENTERED 10-3-19**

Tentative Ruling:

9/25/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, October 11, 2019

Hearing Room 1568

10:00 AM

9:17-10920 RS Construct, Inc.

Chapter 11

Adv#: 9:18-01014 RS Construct, Inc. v. The Walt Disney Company et al

#1.00 Mediation conference

(Hon. Deborah Saltzman, presiding)

Docket 0

Party Information

Debtor(s):

RS Construct, Inc.

Represented By
Jeremy Faith
Montserrat Morales

Defendant(s):

The Walt Disney Company

Pro Se

Disney Incorporated

Pro Se

Walt Disney Parks and Resorts U.S.,

Represented By
Patrick Bollig
Jeffrey W Griffith

Plaintiff(s):

RS Construct, Inc.

Represented By
Noreen A Madoyan
Montserrat Morales
Mitchell B Ludwig

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:08-10666 Lars Erik Hanson

Chapter 7

Adv#: 2:08-01391 Blue Cross and Blue Sheild of Alabama et al v. Hanson et al

#1.00 Status Hearing: [1] Adversary case 2:08-ap-01391. Complaint by Blue Cross and Blue Sheild of Alabama et al against Lars Erik Hanson. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Shemano, David) ---

fr. 6-19-08; 7-17-08; fr. 12-18-08; 6-18-09; 2-17-2010; 6-17-10; 12-9-10;
6-22-11, 12-15-11, 1-5-12, 7-5-12; 2-7-13; 8-15-13; 9-5-13; 3-20-14; 9-25-14;
10-2-14; 4-14-15; 10-13-15; 4-12-16; 10-11-16; 4-11-17; 10-17-17; 4-17-18;
10-16-18; 4-16-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lars Erik Hanson

Represented By
Sam X J Wu

Defendant(s):

Lars Erik Hanson

Pro Se

JAMES L BROWN

Pro Se

Sam X J Wu

Pro Se

Plaintiff(s):

Blue Cross and Blue Sheild of

Represented By
David B Shemano
Marvin Wexler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

CONT... Lars Erik Hanson

Chapter 7

Trustee(s):

James L Brown

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#2.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19; 8-13-19

Docket 1

***** VACATED *** REASON: DISMISSED 9/26/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#3.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19; 6-11-19; 8-13-19

Docket 1

Tentative Ruling:

10/11/2019

The Court conducted an initial Status Conference on March 19, 2019. The Court did not order formal mediation, in view of the parties' representation that they had engaged in preliminary settlement discussions.

The Trustee and the Defendant have agreed upon an open-ended extension of Defendant's deadline to respond to the Complaint, terminable by the Trustee, to enable the parties to engage in settlement discussions.

Based upon its review of the Trustee's Unilateral Status Report, it does not appear to the Court that the parties are making meaningful progress toward settlement. Therefore, the Court will order the matter to formal mediation and will set a deadline by which Defendant must respond to the Complaint.

Good cause appearing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Defendant shall respond to the Complaint by no later than **11/12/2019**.
- 2) A continued Status Conference shall be held on **1/14/2020 at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.
- 3) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **2/13/2020**.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

CONT...

QUIGG LA11, LLC

Chapter 7

- b) The last day to disclose expert witnesses and expert witness reports is **5/26/2020**.
- c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/25/2020**.
- d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **7/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **8/11/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

CONT...

QUIGG LA11, LLC

Chapter 7

the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **8/24/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 4) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the

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CONT... **QUIGG LA11, LLC**

Chapter 7

order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapte v. Hankey Capital, LLC, a

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

FR. 3-19-19; 6-11-19; 8-13-19

Docket 1

Tentative Ruling:

10/11/2019

In connection with a Status Conference conducted on August 13, 2019, the Court entered an order setting litigation deadlines, referring this matter to the Mediation Panel, and directing the Chapter 7 Trustee (the "Trustee") to submit an order assigning this matter to mediation (the "Mediation Order"). The Trustee has not submitted the Mediation Order.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Trustee shall submit the Mediation Order by no later than **November 5, 2019**. If the Trustee does not comply with this deadline, the Court will require the Trustee to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.
- 2) The litigation deadlines previously ordered shall continue to apply, subject to an extension for good cause shown.
- 3) Absent further order of the Court, no further Status Conferences will be conducted.

The Court will prepare and enter an appropriate order.

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CONT... QUIGG LA11, LLC

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19; 8-13-19

Docket 1

Tentative Ruling:

10/11/2019

In connection with a Status Conference conducted on August 13, 2019, the Court entered an order setting litigation deadlines, referring this matter to the Mediation Panel, and directing the Chapter 7 Trustee (the "Trustee") to submit an order assigning this matter to mediation (the "Mediation Order"). The Trustee has not submitted the Mediation Order.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Trustee shall submit the Mediation Order by no later than **November 5, 2019**. If the Trustee does not comply with this deadline, the Court will require the Trustee to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.
- 2) The litigation deadlines previously ordered shall continue to apply, subject to an extension for good cause shown.
- 3) Absent further order of the Court, no further Status Conferences will be conducted.

The Court will prepare and enter an appropriate order.

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CONT... QUIGG LA11, LLC

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:19-01061 Rosendo Gonzalez, Chapter 7 Trustee v. TCG Assets, Inc., a Colorado

#6.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01061. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against TCG Assets, Inc., a Colorado corporation, TCG International Holdings, Inc., a Florida corporation, Michael B. Citron, an individual, Kenneth R. Morris, an individual, Law Office of Kenneth R. Morris LLC, a Colorado limited liability company, The Ulzheimer Group LLC, a Georgia limited liability, John Ulzheimer, an individual, Nicholas Moffat, an individual. (Charge To Estate). Complaint for 1. Avoidance of Transfers Pursuant to 11 U.S.C. § 544; 2. Avoidance of Avoidable Transfers Pursuant to 11 U.S.C. § 548; 3. Recovery on Account of Avoided Transfers Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Funds of Estate Pursuant to 11 U.S.C. § 542; and 5. Breach of Fiduciary Duty Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Melissinos, C)

FR. 5-14-19; 7-16-19

Docket 1

Tentative Ruling:

10/11/2019

On May 9, 2019, the Court entered an order approving a settlement between the Chapter 7 Trustee (the "Trustee") and Defendants John Ulzheimer and the Ulzheimer Group, LLC (collectively, the "Ulzheimer Defendants"). On May 22, 2019, the Trustee dismissed all claims against the Ulzheimer Defendants.

Defendants TCG Assets, Inc., TCG Int'l Holdings, Inc., Michael B. Citron, Kenneth R. Morris, the Law Office of Kenneth R. Morris LLC, and Nicholas Moffat (collectively, the "Remaining Defendants") are represented by Manny Singh, solely for the purposes of settlement. Mr. Singh is located in Fort Lauderdale, Florida, and is not licensed to practice law in the State of California.

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CONT... Green Jane Inc

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On August 2, 2019, all of the Remaining Defendants except for Nicholas Moffat ("Moffat") executed a settlement agreement (the "Settlement Agreement"). Mr. Singh has assured the Trustee that Moffat's signature is forthcoming, but no signature has been provided to the Trustee. However, the Remaining Defendants have made the first three installment payments required under the Settlement Agreement. The Trustee intends to seek approval of the Settlement Agreement. If Moffat does not sign the Settlement Agreement, the Trustee intends to strike Moffat from the Settlement Agreement and pursue a default judgment against Moffat.

Based upon the foregoing, and having reviewed the Trustee's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** The Trustee shall submit a Status Report by no later than fourteen days prior to the hearing.
- 2) The Court will maintain the litigation deadlines set by way of the *Order (1) Setting Litigation Deadlines and (2) Setting Continued Status Conference for October 15, 2019 at 10:00 a.m.* [Doc. No. 23] issued on July 18, 2019. In the Court's experience, the maintenance of litigation deadlines is the best means of facilitating settlement.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

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CONT... Green Jane Inc

Chapter 7

Defendant(s):

TCG Assets, Inc., a Colorado	Pro Se
TCG International Holdings, Inc., a	Pro Se
Michael B. Citron, an individual	Pro Se
Kenneth R. Morris, an individual	Pro Se
Law Office of Kenneth R. Morris	Pro Se
The Ulzheimer Group LLC, a	Pro Se
John Ulzheimer, an individual	Pro Se
Nicholas Moffat, an individual	Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By C John M Melissinos
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Thomas A Willoughby Keith Patrick Banner C John M Melissinos
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**United States Bankruptcy Court
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Los Angeles
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Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:17-18746 AAA American Construction, Inc.

Chapter 7

Adv#: 2:19-01225 Leslie v. Slauson Oil

#7.00 Status Hearing RE: [1] Adversary case 2:19-ap-01225. Complaint by Sam S. Leslie against Slauson Oil. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Simons, Larry)

Docket 1

Tentative Ruling:

10/11/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery

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AAA American Construction, Inc.

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (1)(h)(ii), and

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CONT...

AAA American Construction, Inc.

Chapter 7

shall be filed by the deadline specified in ¶ (1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Defendant(s):

Slauson Oil

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Larry D Simons

**United States Bankruptcy Court
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CONT... AAA American Construction, Inc.

Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
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10:00 AM

2:17-18746 AAA American Construction, Inc.

Chapter 7

Adv#: 2:19-01226 Leslie v. CAPITAL ONE, N.A.

#8.00 Status Hearing RE: [1] Adversary case 2:19-ap-01226. Complaint by Sam S Leslie against CAPITAL ONE, N.A.. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Simons, Larry)

Docket 1

Tentative Ruling:

10/11/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery

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AAA American Construction, Inc.

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cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (1)(h)(ii), and

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AAA American Construction, Inc.

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shall be filed by the deadline specified in ¶ (1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Defendant(s):

CAPITAL ONE, N.A.

Pro Se

Plaintiff(s):

Sam S Leslie

Represented By
Larry D Simons

**United States Bankruptcy Court
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CONT... AAA American Construction, Inc.

Chapter 7

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-18746 AAA American Construction, Inc.

Chapter 7

Adv#: 2:19-01227 Leslie v. Bank Of America N.A.

#9.00 Status Hearing RE: [1] Adversary case 2:19-ap-01227. Complaint by Sam S Leslie against Bank Of America N.A.. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Simons, Larry)

Docket 1

Tentative Ruling:

10/11/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery

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AAA American Construction, Inc.

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (1)(h)(ii), and

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CONT...

AAA American Construction, Inc.

Chapter 7

shall be filed by the deadline specified in ¶ (1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Defendant(s):

Bank Of America N.A.

Pro Se

Plaintiff(s):

Sam S Leslie

Represented By
Larry D Simons

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CONT... AAA American Construction, Inc.

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Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

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10:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

#10.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01128. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Janet Estrada, Steven Molina. (Charge To Estate). -Complaint to Avoid Voidable Transactions and for Turnover Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (D'Alba, Michael)

fr. 7-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 11-5-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By

Jennifer Ann Aragon - SUSPENDED -

Defendant(s):

Janet Estrada

Pro Se

Steven Molina

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

Michael G D'Alba

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Eric P Israel

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10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 7

Adv#: 2:19-01256 Ehrenberg, Chapter 7 Trustee v. Hsu

#11.00 Status Hearing RE: [1] Adversary case 2:19-ap-01256. Complaint by Howard M Ehrenberg, Chapter 7 Trustee against Lillian Yu-Li Hsu. (Charge To Estate). Complaint For Avoidance and Recovery of Fraudulent Transfers and Preferential Transfers Pursuant to 11 U.S.C. §§ 544, 547(b), 548, 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Werth, Steven)

Docket 1

Tentative Ruling:

10/11/2019

The Chapter 7 Trustee (the "Trustee") has been unable to serve the Summons and Complaint because the Defendant's home has been foreclosed upon, the Defendant has refused to disclose to the Trustee where she is now living, and the Defendant has refused to accept e-mail service of the Summons and Complaint. The Trustee has been in communication with Defendant's spouse regarding the Complaint.

Defendant's tactical evasion of service is not well taken. Defendant is the president and 100% shareholder of Fu Kong, Inc., the Debtor. In that capacity, Defendant signed a declaration authorizing the Debtor to seek protection under Chapter 11 of the Bankruptcy Code. *See* Doc. No. 15, Case No. 2:18-bk-17345-ER. The *List of Equity Security Holders* that the Debtor was required to file with its petition required the Defendant to provide her address. The Defendant chose to cause the entity in which she is the 100% shareholder to subject itself to the Bankruptcy Court's jurisdiction so that the entity could benefit from the protections of the Bankruptcy Code. Having caused the entity which she owns to obtain the benefits of bankruptcy protection, the Defendant cannot now avoid the associated burdens of litigation by failing to keep the Court apprised of her current address. *See Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1998) ("[a] party, not the ... court, bears the burden of keeping the court apprised of any changes in [her] mailing address").

Defendant **IS ORDERED** to provide the Trustee a mailing address at which she will accept service of the Summons and Complaint by no later than **October 22, 2019**. Once the Trustee obtains an alias summons, the Clerk of the Court will issue an

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CONT... Fu Kong Inc.

Chapter 7

updated Scheduling Order setting new litigation deadlines, including the date of a continued Status Conference.

The Court will prepare and enter an order requiring the Defendant to provide the Trustee a mailing address at which she will accept service of the Summons and Complaint.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

Defendant(s):

Lillian Yu-Li Hsu

Pro Se

Plaintiff(s):

Howard M Ehrenberg, Chapter 7

Represented By
Steven Werth

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Steven Werth

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10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 7

Adv#: 2:19-01257 Ehrenberg, Chapter 7 Trustee v. Hsu

#12.00 Status Hearing RE: [1] Adversary case 2:19-ap-01257. Complaint by Howard M Ehrenberg, Chapter 7 Trustee against Lung Hsiang Hsu. (Charge To Estate). Complaint For Avoidance and Recovery of Fraudulent Transfers and Preferential Transfers Pursuant to 11 U.S.C. §§ 544, 547(b), 548, 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Werth, Steven)

Docket 1

Tentative Ruling:

10/11/2019

The Defendant currently lives in China. The Chapter 7 Trustee (the "Trustee") does not know Defendant's whereabouts in China. The Trustee has been unable to serve the Summons and Complaint upon the Defendant.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) To provide the Trustee additional time to locate the Defendant and serve the Summons and Complaint, the Court will vacate the litigation deadlines set by way of the *Scheduling Order* [Doc. No. 3] issued on August 8, 2019.
- 2) A continued Status Conference shall take place on **January 14, 2020, at 10:00 a.m.** The Trustee shall file a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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10:00 AM

CONT... Fu Kong Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

Defendant(s):

Lung Hsiang Hsu

Pro Se

Plaintiff(s):

Howard M Ehrenberg, Chapter 7

Represented By
Steven Werth

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Steven Werth

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10:00 AM

2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01059 OBI Acquisition, LLC, a Delaware limited liability v. Stepper et al

#13.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01059. Notice of Removal to United States Bankruptcy Court of Litigation Pending in Los Angeles County Superior Court filed by David M. Goodrich, Chapter 7 Trustee for OBI Probiotic Soda, LLC by OBI Acquisition, LLC, a Delaware limited liability company. (Attachments: # 1 Appendix Adversary Cover Sheet # 2 Appendix Notice of Status Conference on Removal of Action) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica) WARNING: See entry [2] for corrective action. Attorney to file copy of State Court complaint. Modified on 3/4/2019 (Lomeli, Lydia R.).

fr: 4-16-19; 7-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Daniel Stepper	Pro Se
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Dino Sarti	Pro Se
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L.A. Libations, LLC, a California	Pro Se
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Does 1-100 Inclusive	Pro Se
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OBI Probiotic Soda, LLC, a	Pro Se
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Plaintiff(s):

OBI Acquisition, LLC, a Delaware	Represented By
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CONT... OBI Probiotic Soda LLC

Chapter 7

Kevin M Yopp

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

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10:00 AM

2:18-17990 OBI Probiotic Soda LLC

Chapter 7

Adv#: 2:19-01097 Goodrich v. Phillips et al

#14.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01097. Complaint by David M Goodrich against Paul Phillips, Jeff Bonyun, Scott Strasser, Soames Floweree, Eion Hu, Yongjae Kim, Kevin Barenblat, Jeffrey Rhodes, OBI Acquisition, LLC, a Delaware limited liability company, OBI Soda, LLC, a Delaware limited liability company, MB Growth Advisors Corporation, a Nevada corporation. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(81 (Subordination of claim or interest)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Bagdanov, Jessica)

FR. 6-11-19; 7-16-19

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

OBI Probiotic Soda LLC	Pro Se
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Defendant(s):

Paul Phillips	Pro Se
Jeff Bonyun	Pro Se
Scott Strasser	Pro Se
Soames Floweree	Pro Se
Eion Hu	Pro Se
Yongjae Kim	Pro Se
Kevin Barenblat	Pro Se

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CONT... OBI Probiotic Soda LLC

Chapter 7

Jeffrey Rhodes Pro Se

OBI Acquisition, LLC, a Delaware Pro Se

OBI Soda, LLC, a Delaware limited Pro Se

MB Growth Advisors Corporation, a Pro Se

DOES 1-25 Pro Se

Plaintiff(s):

David M Goodrich

Represented By
Jessica L Bagdanov

Trustee(s):

David M Goodrich (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

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10:00 AM

2:18-22393 Sharon R Williams

Chapter 7

Adv#: 2:19-01050 Miller v. Hancox

#15.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01050. Complaint by Elissa D. Miller against Donnell Hancox. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Simons, Larry)

fr. 5-14-19; 6-11-19

Docket 1

***** VACATED *** REASON: CONTINUED 12-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon R Williams

Pro Se

Defendant(s):

Donnell Hancox

Pro Se

Plaintiff(s):

Elissa D. Miller

Represented By
Larry D Simons

Trustee(s):

Elissa Miller (TR)

Represented By
Larry D Simons

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Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 MERCHANTS ACQUISITION GROUP LLC v. Carrasco

- #16.00** Status Hearing
RE: [1] Adversary case 2:19-ap-01085. Complaint by MERCHANTS ACQUISITION GROUP LLC against Paul Carrasco. false pretenses, false representation, actual fraud)) (Snyder, Richard)
fr. 6-11-19; 9-10-19

Docket 1

Tentative Ruling:

10/11/2019

Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously set by way of the *Order (1) Setting Status Conference for October 15, 2019 at 10:00 a.m. and (2) Setting Litigation Deadlines* [Doc. No. 37], issued on August 9, 2019, shall remain in effect.
- 2) Absent further order of the Court, no additional Status Conferences will be conducted.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter an order in connection with this Status Conference. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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CONT... Paul A. Carrasco

Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul Carrasco

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01110 Nguyen dba Sam Bullion & Coin v. Zendedel

#17.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01110. Complaint by Sam Thuy Nguyen dba Sam Bullion & Coin against Bahram Zendedel. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

fr: 8-13-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 9-27-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Defendant(s):

Bahram Zendedel

Pro Se

Plaintiff(s):

Sam Thuy Nguyen dba Sam Bullion

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01111 Danny's Silver Jewelry Inc., a California cor v. Zendedel

#18.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01111. Complaint by Danny's Silver Jewelry Inc., a California corporation, dba Danny's Silver, Inc., dba Danny's Silver & Gold against Bahram Zendedel. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

fr: 8-13-19

Docket 1

Tentative Ruling:

10/11/2019

The parties have reached a settlement in principle. In the Court's experience, maintaining litigation deadlines is the best means of facilitating settlement.

Accordingly, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously set by way of the *Order (1) Setting Litigation Deadlines and (2) Setting Continued Status Conference for October 15, 2019 at 10:00 a.m.* [Doc. No. 12], issued on August 27, 2019, shall remain in effect.
- 2) A continued Status Conference shall be held on **January 14, 2020, at 10:00 a.m.** A Joint Status Report, which should discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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CONT... Bahram Zendedel

Chapter 7

please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Defendant(s):

Bahram Zendedel

Pro Se

Plaintiff(s):

Danny's Silver Jewelry Inc., a

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:19-12915 John F Gallardo

Chapter 7

Adv#: 2:19-01120 Dye, solely in her capacity as Chapter 7 Trustee f v. Gallardo et al

#19.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01120. Complaint by Carolyn Dye against Mario Gallardo, Mary Gallardo. (Charge To Estate). Nature of Suit: (91 (Declaratory judgment)),(14 (Recovery of money/property - other)) (Iskander, Brandon)

fr. 7-16-19

Docket 1

*** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John F Gallardo

Represented By
Christopher J Langley

Defendant(s):

Mario Gallardo

Pro Se

Mary Gallardo

Pro Se

Joint Debtor(s):

Irene S Gallardo

Represented By
Christopher J Langley

Plaintiff(s):

Carolyn Dye, solely in her capacity

Represented By
Brandon J Iskander

Trustee(s):

Carolyn A Dye (TR)

Represented By
Lynda T Bui
Brandon J Iskander

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CONT... John F Gallardo

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10:00 AM

2:19-13844 Mauro Enrique Castellon

Chapter 7

Adv#: 2:19-01204 Security First Bank v. Castellon

#20.00 Status Hearing RE: [1] Adversary case 2:19-ap-01204. Complaint by THE DUNNING LAW FIRM APC SECURITY FIRST BANK against Mauro Enrique Castellon. false pretenses, false representation, actual fraud)) (MacLeod, James)

Docket 1

Tentative Ruling:

10/11/2019

Default was entered against the Defendant on September 27, 2019. Doc. No. 26. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **November 15, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **December 10, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Mauro Enrique Castellon

Chapter 7

Debtor(s):

Mauro Enrique Castellon

Represented By
James Geoffrey Beirne

Defendant(s):

Mauro Enrique Castellon

Pro Se

Plaintiff(s):

Security First Bank

Represented By
James MacLeod

Trustee(s):

Elissa Miller (TR)

Pro Se

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10:00 AM

2:19-14029 Oran Kemp, Jr.

Chapter 7

Adv#: 2:19-01223 Clady v. Kemp, Jr.

#21.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01223. Complaint by Ryan Clady against Oran Kemp Jr.. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Ghanooni, Eliza)

Docket 1

***** VACATED *** REASON: Cont'd to 11/13/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oran Kemp Jr.

Represented By
Sean S Vahdat

Defendant(s):

Oran Kemp Jr.

Pro Se

Plaintiff(s):

Ryan Clady

Represented By
Eliza Ghanooni

Trustee(s):

John J Menchaca (TR)

Pro Se

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2:19-14029 Oran Kemp, Jr.

Chapter 7

Adv#: 2:19-01223 Clady v. Kemp, Jr.

#22.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding

Docket 9

***** VACATED *** REASON: Cont'd to 11/13/2019 at 10:00 a .m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oran Kemp Jr.

Represented By
Sean S Vahdat

Defendant(s):

Oran Kemp Jr.

Represented By
Baruch C Cohen

Plaintiff(s):

Ryan Clady

Represented By
Eliza Ghanooni

Trustee(s):

John J Menchaca (TR)

Pro Se

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Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:19-14464 Kevin Garnier

Chapter 7

Adv#: 2:19-01233 Blue v. Garnier

#23.00 Status HearingRE: [1] Adversary case 2:19-ap-01233. Complaint by Rolando Blue against Kevin Garnier. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Kaplan, Jerome)

Docket 1

Tentative Ruling:

10/11/2019

In an attempt to initiate settlement discussions, Plaintiff's counsel sent Defendant an e-mail providing in relevant part:

I also want to discuss resolving this matter and reaching a settlement. The small claims court already issued a judgment and my client is willing to discuss a payment plan. Please give me a call as soon as possible to discuss.

Doc. No. 11, Ex. 1.

In his Unilateral Status Report, Defendant responds as follows to Plaintiff's attempts to initiate settlement discussions:

I am not open to any type of discussion where the opposing side begins with a nonsensical tactic clearly designed to intimidate. Telling me that I have a small claims judgment is redundant, ridiculous and a complete waste of time. I am very much aware of the judgment issued by the small claims court.... If this is the manner in which attorneys attempt to initiate the settlement process it's not surprising why most people don't trust lawyers and perhaps the entire legal process.

Doc. No. 13.

The Court does not view the language in Plaintiff's e-mail as an intimidation tactic. The Court notes that the issues raised in this litigation are not complex and are susceptible to resolution through mediation. The Court's Mediation Program allows

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parties to attend one day of mediation for free. The Court will refer this matter to the Mediation Panel.

Having reviewed the Unilateral Status Reports submitted by Plaintiff and Defendant, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and

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the preparation of the Pretrial Stipulation:

- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (1)(h)(ii), and shall be filed by the deadline specified in ¶ (1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
 - 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's

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website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Garnier

Represented By
Misty Wilks

Defendant(s):

Kevin Garnier

Pro Se

Plaintiff(s):

Rolando Blue

Represented By
David S Kadin
Jerome Kaplan

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:19-14464 Kevin Garnier

Chapter 7

Adv#: 2:19-01234 Li v. Garnier

#24.00 Status Conference RE: [1] Adversary case 2:19-ap-01234. Complaint by Qi Li against Kevin Garnier. false pretenses, false representation, actual fraud)) (Wolk, Sarah)

Docket 1

Tentative Ruling:

10/11/2019

On September 13, 2019, Plaintiff filed a *First Amended Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(B)* [Doc. No. 9] (the "First Amended Complaint"). Under Civil Rule 15(a)(1)(B), Plaintiff's deadline to file the First Amended Complaint without obtaining "the opposing party's written consent or the court's leave" was September 10, 2019 (21 days after service of the Answer). *See* Civil Rule 15(a)(1)(B) and (a)(2). Plaintiff did not obtain the opposing party's written consent or the Court's leave prior to filing the First Amended Complaint.

On September 18, 2019, the Court issued an *Order on First Amended Complaint* [Doc. No. 10] (the "Order"), which provided in relevant part:

- 1) The deadline for Plaintiff to file an amended complaint as a matter of course was September 10, 2019. Because Plaintiff did not file the First Amended Complaint by this deadline, Plaintiff must obtain either the Defendant's consent or the Court's leave prior to filing the First Amended Complaint.
- 2) Until Plaintiff either (a) obtains Defendant's consent to the filing of the First Amended Complaint or (b) obtains the Court's leave to file the First Amended Complaint upon noticed motion (see Civil Rule 15(a)(2)), the Court will take no action on the First Amended Complaint, and the Complaint shall remain the operative pleading in this action. The Clerk of the Court is directed not to issue a Summons in connection with the First Amended Complaint.

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Order at 2.

Plaintiff has not obtained Defendant's consent to the filing of the First Amended Complaint and has not obtained the Court's leave to file the First Amended Complaint. Therefore, the Complaint filed on July 22, 2019 remains the operative pleading in this action.

Prior to the Debtor's bankruptcy filing, Plaintiff commenced an action in the State Court (the "State Court Action") seeking to establish the indebtedness alleged to be non-dischargeable in this action (the "Non-Dischargeability Action"). As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether the Defendant is indebted to the Plaintiff; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001).

In the Court's view, the most efficient way to resolve the Non-Dischargeability Action is for Plaintiff to first prosecute the District Court Action to final judgment. In the event Plaintiff obtains judgment in its favor, Plaintiff can then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is non-dischargeable. The State Court Action asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, money had and received, negligence, fraud, and recovery on a contractor's bond. The State Court is better equipped than this Court to determine whether Defendant is indebted to Plaintiff on account of these claims, all of which require the application of substantive non-bankruptcy law.

By separate order, the Court will require Plaintiff and the Debtor to show cause why the Court should not *sua sponte* lift the automatic stay to allow the State Court Action to proceed to final judgment. The hearing on the Order to Show Cause shall take place on **November 19, 2019, at 10:00 a.m.** Plaintiff shall file a response to the Order to Show Cause by no later than **October 29, 2019**. Any opposition to Plaintiff's response shall be filed by no later than **November 5, 2019**. Plaintiff's reply to any opposition shall be filed by no later than **November 12, 2019**.

The Status Conference shall be continued to the date of the hearing on the Orders to Show Cause. At the continued Status Conference, the Court will set updated litigation deadlines.

The Court will prepare and enter the Order to Show Cause and the order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Garnier

Represented By
Misty Wilks

Defendant(s):

Kevin Garnier

Pro Se

Plaintiff(s):

Qi Li

Represented By
Sarah R Wolk
Zachary Levine

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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10:00 AM

2:19-15098 Phachira Ketkaew

Chapter 7

Adv#: 2:19-01252 Jittanoon et al v. Ketkaew

#25.00 Status HearingRE: [1] Adversary case 2:19-ap-01252. Complaint by Peera Jittanoon, Preda Jittanoon against Phachira Ketkaew. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Landsberg, Ian)

Docket 1

Tentative Ruling:

10/11/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The parties have requested that the matter not be assigned to formal mediation until after discovery has been completed. Based upon that request, the Court will not assign the matter to formal mediation at this time.
- 2) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** A Joint Status Report, which shall discuss the status of settlement negotiations, shall be submitted by no later than fourteen days prior to the hearing.
- 3) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **11/14/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **2/25/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/26/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/14/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery

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Phachira Ketkaew

Chapter 7

- motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **4/21/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/25/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **5/12/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting

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Phachira Ketkaew

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- argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶ (3)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶ (3)(h)(ii), and shall be filed by the deadline specified in ¶ (3)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
 - i) Trial is set for the week of **5/25/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will prepare and enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Phachira Ketkaew

Represented By
Jarintorn Tanatchasai

Defendant(s):

Phachira Ketkaew

Pro Se

Plaintiff(s):

Peera Jittanoon

Represented By
Ian Landsberg

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CONT... Phachira Ketkaew

Chapter 7

Preda Jittanoon

Represented By
Ian Landsberg

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, October 15, 2019

Hearing Room 1568

10:00 AM

2:19-16669 Parkridge Private School, Inc.

Chapter 7

Adv#: 2:19-01213 Santos et al v. Parkridge Private School, Inc.

#26.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01213. Complaint by Efrain Santos, Evelyn Lambert against Parkridge Private School, Inc.. Eric)

Docket 1

***** VACATED *** REASON: CONTINUED 11-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Defendant(s):

Parkridge Private School, Inc.

Pro Se

Plaintiff(s):

Efrain Santos

Represented By
Eric C Morris

Evelyn Lambert

Represented By
Eric C Morris

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

Adv#: 2:19-01331 Barakat v. Cafa Homes Inc. et al

#27.00 Status Hearing
RE: [3] Amended Complaint AMENDED NOTICE OF REMOVAL by Shalem Shem-Tov on behalf of Faoud Barakat against Cafa Homes Inc., Carlos A. Flores. (Attachments: # 1 Notice of Status Conference) (Shem-Tov, Shalem)

Docket 3

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Defendant(s):

Cafa Homes Inc.

Pro Se

Carlos A. Flores

Pro Se

Plaintiff(s):

Faoud Barakat

Represented By
Shalem Shem-Tov

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#28.00 Status conference re status of appeal

fr. 7-9-19

Docket 129

Tentative Ruling:

10/11/2019

Trial in this adversary proceeding was initially set for May 29–30, 2018. On May 28, 2018, Defendant Tsai Luan Ho a/k/a Shelby Ho ("Ho") (the only remaining defendant) filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Northern District of California (the "Northern District Bankruptcy Court"). The Court took the trial off calendar. Based upon Plaintiff's representation that it intended to pursue a non-dischargeability action against Ho in the Northern District Bankruptcy Court, the Court subsequently dismissed this action without prejudice.

On July 20, 2018, Plaintiff filed a non-dischargeability action against Ho in the Northern District Bankruptcy Court (the "523 Action"). On August 23, 2018, the Chapter 7 Trustee in Ho's bankruptcy case filed a § 727 complaint to deny Ho's discharge (the "727 Action"). On April 9, 2019, the Northern District Bankruptcy Court entered judgment denying Ho's discharge, pursuant to § 727(a)(3) (the "Judgment Denying Discharge"). On April 16, 2019, Ho appealed the Judgment Denying Discharge to the United States District Court for the Northern District of California (the "District Court"). On June 7, 2019, the Northern District Bankruptcy Court denied Ho's motion for a stay pending appeal of the Judgment Denying Discharge. Ho's appeal of the Judgment Denying Discharge remains pending before the District Court. Proceedings in the 523 Action have been stayed pending resolution of the appeal of the Judgment Denying Discharge. On April 26, 2019, the Northern District Bankruptcy Court issued a minute order providing that the 523 Action "may be restored to the calendar after the District Court acts on the pending appeal" of the Judgment Denying Discharge.

On July 9, 2019, the Court conducted a hearing on Plaintiff's motion to reopen this adversary proceeding (the "Motion to Reopen"). Plaintiff sought an order reopening

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CONT... Liberty Asset Management Corporation

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this proceeding and setting the matter for an immediate status conference in trial.

The Court ruled that it would not set this matter for trial until the District Court had decided Ho's appeal of the Judgment Denying Discharge. The Court reasoned:

In the event that the District Court overturns the Judgment Denying Discharge, Plaintiff will be required to pursue the 523 Action to obtain a recovery against Ho. The 523 Action is based upon the same nucleus of operative facts as this action. The potential for duplicative litigation weighs against proceeding to trial at this time. In addition to wasting judicial resources, the additional costs resulting from a duplicative trial would decrease the recoveries available for distribution to creditors by the Plan Administrator.

Ruling on Motion to Reopen [Doc. No. 135] at 4.

The Court set this Status Conference to monitor the status of Ho's appeal of the Judgment Denying Discharge. The appeal remains pending before the District Court (briefing was completed on October 9, 2019).

A continued Status Conference to monitor the appeal shall be held on **December 10, 2019, at 10:00 a.m.** A Status Report shall be submitted by no later than seven days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

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CONT... Liberty Asset Management Corporation

Chapter 11

Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By
James Andrew Hinds Jr
Paul R Shankman
Rachel M Sposato

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

Bradley D. Sharp

Represented By
Gail S Greenwood

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#29.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01165. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association. priority or extent of lien or other interest in property)),(91 (Declaratory judgment)) (Shinderman, Mark) fr. 9-10-19

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE ON AMENDED COMPLAINT 12/10/19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#30.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01166. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association. priority or extent of lien or other interest in property)),91 (Declaratory judgment)) (Shinderman, Mark)
fr. 9-10-19

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE ON AMENDED COMPLAINT 12/10/19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#31.00 Hearing
RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19

Docket 2995

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

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#32.00 HearingRE: [3188] Emergency motion Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief; Memorandum of Points and Authorities and Declarations In Support Thereof
WARNING: See entry [3192] for corrective action. Attorney to lodge order via LOU.
Modified on 10/1/2019 (Lomeli, Lydia R.).

Docket 3188

Tentative Ruling:

10/15/2019 (this matter will not be called for hearing until 11:00 a.m.):

Before the Court is the Debtors' motion to sell four not-for-profit hospitals free and clear of regulatory conditions which the California Attorney General claims authority to impose under Cal. Corp. Code § 5914. For the reasons set forth below, the Court finds that § 363 of the Bankruptcy Code authorizes a sale free and clear of the conditions imposed by the Attorney General.

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County. [**Note 1**] That sale closed on February 28, 2019.

On February 19, 2019, the Court entered an order establishing bidding procedures (the "Bidding Procedures Order") for the auction of the Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), Seton Medical Center ("Seton"), and Seton Medical Center Coastsides ("Seton Coastsides") (collectively, the

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"Hospitals"). Under the Bidding Procedures Order, Strategic Global Management ("SGM") was designated as the stalking horse bidder. SGM's bid for all four of the Hospitals was \$610 million.

The Hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain Brothers"). Cain Brothers notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the Hospitals.

Notwithstanding Cain Brothers' thorough marketing efforts, the Debtors did not receive any qualified bids for all of the Hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").

In 2015, prior to the commencement of these cases, the Debtors' predecessor sought authorization from the California Attorney General (the "Attorney General"), pursuant to Cal. Corp. Code § 5914, to implement a *System Restructuring and Support Agreement* (the "Restructuring Agreement"). The Attorney General approved the Restructuring Agreement, subject to various conditions (the "2015 Conditions"). Among other things, the 2015 Conditions required capital expenditures to make the Hospitals seismically compliant, and required the Hospitals to maintain specified levels of emergency services, intensive care services, cardiac services, and various other services.

Cal. Corp. Code § 5914 requires a non-profit entity operating a health facility to obtain approval from the Attorney General when selling a material amount of its assets to a for-profit entity. Pursuant to Cal. Corp. Code § 5914, the Debtors submitted the SGM Sale to the Attorney General for review.

The Asset Purchase Agreement under which SGM agreed to purchase the Hospitals (the "APA") provided that SGM would close the sale so long as any conditions imposed by the Attorney General under the review process set forth in Cal. Corp. Code § 5914 were substantially consistent with conditions that SGM had agreed to accept (the "Approved Conditions"). **[Note 2]** In the event that the Attorney General sought to impose conditions materially different from the Approved Conditions (the "Additional Conditions"), the APA provided that the Debtors would have an opportunity to seek a determination from the Court that the Hospitals could be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy

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Code. Under the APA, Additional Conditions imposing upon SGM costs of \$5 million or more are conclusively deemed to be materially different from the Approved Conditions. Further, if the Debtors fail to obtain a final, non-appealable order authorizing the sale free and clear of the Additional Conditions, SGM is not obligated to close on the sale and is entitled to a refund of its good faith deposit.

On September 25, 2019, the Attorney General consented to the SGM Sale, subject to various conditions (the "2019 Conditions"). The 2019 Conditions are materially different from the Approved Conditions that SGM had agreed to accept. In particular, two of the 2019 Conditions impose an additional financial burden upon SGM of approximately \$305 million. First, the 2019 Conditions require that SGM continue to operate St. Vincent as a licensed general acute care hospital through December 2024. SGM had agreed to maintain St. Vincent's general acute care license only through December 2020. SGM estimates that continuing to operate St. Vincent as a general acute care hospital for an additional four years would cost approximately \$285 million. Second, the 2019 Conditions require St. Francis to provide annual charity care in an amount of \$12,793,435 for six fiscal years. The required charity care amount is approximately \$6.4 million more than the charity care that St. Francis provided in fiscal year 2019. The charity care requirement imposes an additional incremental cost of approximately \$20 million.

SGM will not close the sale absent an order finding that the Hospitals can be sold free and clear of the Additional Conditions pursuant to § 363(f). If the SGM Sale does not close, the most likely outcome will be the closure of St. Vincent, Seton, and Seton Coastside. The Debtors would be required to close these three Hospitals to conserve resources to continue to operate St. Francis, the most solvent of the Hospitals, during the time it would take to obtain approval of a sale of St. Francis. The Debtors cannot continue to sustain operational losses of approximately \$450,000 per day without the prospect of a prompt sale. There is no back-up bidder to purchase the Hospitals if the SGM Sale does not close.

The Debtors are facing very significant liquidity constraints. Recently, the California Department of Health Care Services (the "DHCS") began withholding certain Medi-Cal fee-for-service payments owed to the Debtors, for the purposing of recovering alleged Medi-Cal overpayments. As of the beginning of October 2019, DHCS had withheld approximately \$4.5 million. The Debtors do not have the ability to borrow under any debtor-in-possession financing facility. At this time, the Debtors' cases are being financed by a consensual cash collateral stipulation executed between the Debtors and the principal secured creditors (the "Cash Collateral Stipulation").

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Termination of the APA constitutes an event of default under the Cash Collateral Stipulation. It is unclear whether the Debtors would be able to obtain alternative financing. Further, the Debtors must begin the expensive process of closing the Hospitals while they still possess a significant cash buffer. **[Note 3]** In short, the Debtors' prediction that failure of the SGM Sale would necessitate the closure of St. Vincent, Seton, and Seton Coastside is not a bluff.

The Attorney General asserts that imposition of the 2019 Conditions will not result in the closure of St. Vincent, Seton, or Seton Coastside. The Attorney General points to a declaration from Kenneth Sim, M.D. (the "Sim Decl."), the Chairman of Allied Physicians of California, A Professional Medical Corporation ("Allied"). According to the Attorney General, the Sim Decl. shows that Allied is prepared to acquire Seton and Seton Coastside and operate both Hospitals in accordance with the 2019 Conditions.

Contrary to the Attorney General's characterization, the Sim Decl. provides no certainty that a sale of Seton and Seton Coastside will occur. The Sim Decl. states only that "Allied remains interested in purchasing Seton" Sim Decl. at ¶ 5. The Court further notes that Allied did not timely submit a qualified bid for Seton. At this late stage in the proceedings, Allied's vague statement that it is "interested" in purchasing Seton and Seton Coastside does nothing to dissuade the Court from its conclusion that absent consummation of the SGM Sale, Seton and Seton Coastside will most likely close.

The Attorney General also points to a bid for the Hospitals submitted by Prime Healthcare ("Prime"). The Attorney General overlooks the Prime did not submit a qualified bid. Among other things, Prime failed to submit the mandatory good faith deposit. In fact, Prime itself recognized that its "bid will not be formally considered at auction" and was submitted only "for reference." **[Note 4]** Further, Prime stated that it did not want to serve as a back-up bidder. **[Note 5]** In short, Prime's offer to purchase the Hospitals is just as illusory as Allied's.

Finally, the Attorney General points to an offer by AHMC Healthcare, Inc. ("AHMC Healthcare") to purchase St. Francis. The Attorney General is correct that AHMC submitted a qualified bid to purchase St. Francis. However, even assuming that AHMC would follow through on its prior bid to purchase St. Francis, that still would not prevent the closure of St. Vincent, Seton, and Seton Coastside. As discussed above, the Debtors lack sufficient cash to continue operating all four Hospitals during the time it would take for a sale of St. Francis to close. The Debtors would be required to close St. Vincent, Seton, and Seton Coastside in order to have sufficient funds to maintain operations at St. Francis during the sale process.

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It is against this backdrop that the Debtors move for authorization to sell the Hospitals free and clear of the Additional Conditions, pursuant to § 363(f). The Debtors argue that the Additional Conditions constitute an "interest in property" within the meaning of § 363(f), and that a sale free and clear of the 2019 Conditions may be authorized under § 363(f)(1), (4), or (5), for the following reasons:

- Pursuant to § 363(f)(1), the Hospitals may be sold under applicable nonbankruptcy law, because under California law, the purchaser of assets does not assume successor liability.
- Pursuant to § 363(f)(4), the validity of the Additional Conditions is subject to a *bona fide* dispute, because the Attorney General abused his discretion in imposing the 2019 Conditions.
- Pursuant to § 363(f)(5), the Attorney General could be compelled to accept a money satisfaction of certain of the Additional Conditions, such as the condition that SGM provide specified levels of charitable care.

The Debtors assert that imposition of the Additional Conditions violates § 525, which prohibits government entities from discriminating against debtors in the issuance of licenses for failure to pay a dischargeable debt. According to the Debtors, the Additional Conditions constitute an attempt by the Attorney General to collect a dischargeable debt. The Debtors' theory is that Attorney General's refusal to approve the SGM Sale absent imposition of the Additional Conditions amounts to the discriminatory denial of licensure in contravention of § 525.

Finally, the Debtors request that the Court issue a writ of mandate compelling the Attorney General to approve the SGM Sale without imposition of the Additional Conditions, pursuant to Cal. Civ. Proc. Code § 1085 or § 1094.5. The Debtors assert that a writ of mandate is justified because the Attorney General abused his discretion by imposing the Additional Conditions.

The Committee supports the Motion. The Committee argues that prompt closing of the SGM Sale is the best means of insuring a distribution to unsecured creditors.

The Attorney General opposes the Motion. He disputes the Debtors' contention that the Hospitals may be sold under applicable nonbankruptcy law, or that a *bona fide* dispute exists as to the Attorney General's authority to impose the Additional Conditions. The Attorney General denies that he abused his discretion in imposing the Additional Conditions. He notes that he considered an extensive record in arriving at the Additional Conditions, and states that the Debtors' dislike of the Additional

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Conditions does not mean that imposition of the conditions was an abuse of discretion.

Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), which represents approximately 1,303 employees at St. Vincent and St. Francis, opposes the Motion. SEIU-UHW contends that the Additional Conditions are economically feasible for SGM.

The United Nurses Association of California/Union of Health Care Professional ("UNAC"), which represents approximately 900 registered nurses at St. Francis, urges SGM, the Attorney General, and the Debtors to explore prospects for a consensual resolution with respect to the Additional Conditions.

II. Discussion

Section 363(d)(1) authorizes non-profit entities, such as the Debtors, to sell estate assets only if the sale is "in accordance with nonbankruptcy law applicable to the transfer of property by" a non-profit entity. Section 541(f) similarly provides that property held by debtors that are § 501(c)(3) corporations under the Internal Revenue Code may be transferred, but "only under the same conditions as would apply if the debtor had not filed a case under this title." Section 363(b) authorizes the Debtors to sell estate property out of the ordinary course of business, subject to court approval. The Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Section 363(f) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate," provided that certain conditions are satisfied.

A. The Additional Conditions are an "Interest in Property" Within the Meaning of § 363(f)

As this Court has previously explained:

The Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f). The Third Circuit has held that the phrase "interest in ... property" is "intended to refer to obligations that are connected to, or arise from, the property being sold." *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw "in

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favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property." 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).

Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment insurance statutes constituted an "interest in ... property." The taxes were computed based on the Debtor's "experience rating," which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70.

Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an "interest in ... property" within the meaning of § 363(f).

In re Gardens Reg'l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

The Additional Conditions are an "interest in property" within the meaning of § 363(f). First, the Additional Conditions are monetary obligations arising from the ownership of property. Similar to the "experience rating" at issue in *PBBPC, Inc.*, 484 B.R. 860, the Additional Conditions were calculated based upon the Hospitals' prior operating history. Among other things, the Additional Conditions require that SGM cause the Hospitals to provide specified levels of healthcare services. The required service levels have been set based upon the Hospitals' historical operations. For example, the Additional Conditions require that St. Francis "maintain and provide 24-hour emergency and trauma medical services at no less than current licensure and designation with the same types and/or levels of services" [Note 6] St. Francis is required to maintain cardiac services, critical care services, neonatal intensive services, women's health services, cancer services, pediatric services, orthopedic and

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rehabilitation services, wound care services, behavioral health services, and perinatal services, all at "current licensures, types, and/or levels of services." [Note 7] St. Vincent, Seton, and Seton Coastside are also required to maintain various healthcare services at current levels. [Note 8]

Second, the Attorney General's statutory authority to impose the Additional Conditions arises from the Debtors' operation of the Hospitals as non-profit entities. Had the Debtors not operated the Hospitals in this manner, there could be no contention that the SGM Sale is subject to the Attorney General's review pursuant to Cal. Corp. Code § 5914. In this sense as well, the Additional Conditions "arise from the property being sold," *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003), and therefore qualify as an "interest in ... property" within the meaning of § 363(f).

B. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(1)

Sale of the Hospitals may be free and clear of the Additional Conditions only upon satisfaction of one or more of the five prongs set forth in § 363(f).

Under § 363(f)(1), a sale free and clear may be approved if permitted by applicable nonbankruptcy law. As set forth below, the Court finds that the Attorney General's decision to impose the Additional Conditions is subject to judicial review by administrative mandate under California law. This Court is empowered to conduct such judicial review pursuant to § 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which provides:

Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Pub. L. No. 109-8, § 1221(e) (2005). [Note 9] See also *In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016) (construing New York state law to determine the appropriate disposition of a non-profit debtor's assets).

Upon review of the Attorney General's decision, the Court finds that the imposition of the Additional Conditions constituted an abuse of discretion, for the reasons explained below. Therefore, the Additional Conditions must be set aside, which means that the Debtors are authorized to sell the Hospitals free and clear of the

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Additional Conditions under applicable nonbankruptcy law.

1. The Attorney General's Imposition of the Additional Conditions is Subject to Judicial Review by Administrative Mandate

Cal. Civ. Proc. Code § 1094.5 provides for judicial review by administrative mandate of decisions made by agencies or officers of the State of California. A decision is subject to reversal if "there was any prejudicial abuse of discretion." Cal. Civ. Proc. Code § 1094.5(b). An "abuse of discretion is established if ... the order or decision is not supported by the findings, or the findings are not supported by the evidence." *Id.* Under administrative mandamus, the Court must "begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings." *Fukuda v. City of Angels*, 20 Cal. 4th 805, 819, 977 P.2d 693, 701 (1999). "[T]he presumption provides the trial court with a starting point for review but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." *Id.*

The Attorney General contends that administrative mandamus review is not available because the Additional Conditions were not issued subsequent to "a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal." Cal. Civ. Proc. Code § 1094.5(a). The Attorney General acknowledges that he conducted "public meetings ... to hear comments from interested parties" as required by Cal. Corp. Code § 5922. However, the Attorney General asserts that such public meetings were not "hearings" within the meaning of Cal. Civ. Proc. Code § 1094.5(a), because public comments were not presented under oath and no effort was made to determine the accuracy of the information offered by members of the public. The Attorney General's position is that the Debtors are entitled only to traditional mandamus review under Cal. Civ. Proc. Code § 1085.

"Quasi-legislative acts are ordinarily reviewed by traditional mandate, and quasi-judicial acts are reviewed by administrative mandate. 'Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.'" *Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1389, 61 Cal. Rptr. 2d 297, 303 (1997) (internal citation omitted).

The Court is not persuaded by the Attorney General's contention that

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administrative mandamus review is unavailable to the Debtors. In reviewing the SGM Sale, the Attorney General hired JD Healthcare, Inc. to prepare expert reports containing information on how the SGM Sale would affect the availability of healthcare services in the regions served by the Hospitals. The JD Healthcare expert reports contained recommendations regarding the conditions that the Attorney General should impose on the SGM Sale. Upon receiving the expert reports, the Attorney General asked the Debtors to respond to the conditions recommended by JD Healthcare. The Attorney General conducted public meetings, all of which were transcribed, at which members of the public commented on the SGM Sale. "[P]urely documentary proceedings can satisfy the hearing requirement of Code of Civil Procedure § 1094.5, so long as the agency is required by law to accept and consider evidence from interested parties before making its decision." *Friends of the Old Trees*, 52 Cal. App. 4th at 1391–92. Here, the Attorney General received evidence from JD Healthcare, conducted hearings at which members of the public commented, and elected to impose the Additional Conditions after considering all the evidence collected during the review process. The Attorney General's review of the SGM Sale was a quasi-judicial act subject to review by administrative mandate.

The Attorney General next asserts that administrative mandamus review is unavailable because the Debtors have failed to produce the complete administrative record supporting the Attorney General's decision. This contention is without merit. For purposes of administrative mandamus review, a partial record is sufficient if it "accurately represent[s] the administrative proceedings, provide[s] the reviewing court with an understanding of what occurred below, and enable[s] that court to undertake an independent judicial review of the administrative decision." *Elizabeth D. v. Zolin*, 21 Cal. App. 4th 347, 349, 25 Cal. Rptr. 2d 852 (1993). The record before the Court consists of the expert reports prepared by JD Healthcare, partial transcripts of public meetings conducted by the Attorney General, and various letters submitted by stakeholders. The record on file provides the Court with an understanding of reasons for the Attorney General's decision.

2. In Imposing the Additional Conditions, the Attorney General Abused His Discretion

Under certain circumstances, the sale of a not-for-profit healthcare facility is subject to review by the Attorney General. Cal. Corp. Code § 5914. The Legislature enacted Cal. Corp. Code § 5914 to ensure that the public was not deprived of the benefits of charitable health facilities as a result of the transfer of those facilities' assets to for-profit entities. In enacting § 5914, the Legislature found:

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Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.

Transfers of the assets of nonprofit, charitable health facilities to the for-profit sector, such as by sale, joint venture, or other sharing of assets, directly affect the charitable use of those assets and may affect the availability of community health care services....

It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

1996 Cal. Legis. Serv. Ch. 1105 (A.B. 3101) (West).

The Attorney General has "discretion to consent to, give conditional consent to, or not consent to" the sale of a healthcare facility. Cal. Corp. Code § 5917. In exercising that discretion, the Attorney General "shall consider any factors that the Attorney General deems relevant," including but not limited to whether any of the following apply:

- a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
- b) The agreement or transaction will result in inurement to any private person or entity.
- c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, "fair market value" means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.
- d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
- e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

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- f) The agreement or transaction involves or constitutes any breach of trust.
- g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.
- h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- i) The proposed agreement or transaction is in the public interest.
- j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

Cal. Corp. Code § 5917 (West).

Nothing in the record indicates that SGM's bid was other than for fair market value (factor (c)). The Hospitals were thoroughly marketed by Cain Brothers. SGM was the only bidder interested in purchasing the Hospitals. The Court must presume that a bid submitted after extensive marketing reflects the Hospital's fair market value.

There is no indication that SGM, or any other party, took any actions to decrease the value of the Hospitals (factor (d)). In view of the extensive marketing, the terms of the sale are fair and reasonable to the Debtors (factor (a)). There is no evidence that any of the parties involved in the SGM sale have engaged in any conduct that would amount to a breach of trust (factor (f)), or that the SGM Sale will inure to the benefit of any private person or entity (factor (b)). Nor has there been any suggestion that the Debtors failed to provide the Attorney General with sufficient information to evaluate the SGM Sale (factor (g)). Factor (e) does not apply, because the proceeds of the SGM Sale are fully encumbered by the claims of creditors, leaving no remaining equity that could be devoted to charitable purposes.

The remaining factors are (1) the effect of the SGM Sale on the accessibility of healthcare services (factor (h)) and cultural interests (factor (j)) in the affected communities and (2) whether the SGM Sale is in the public interest (factor (i)). In electing to impose the Additional Conditions, the Attorney General abused his discretion in the application of these factors.

By letter dated August 23, 2019 (the "August Letter"), the Debtors advised the Attorney General that if the Additional Conditions were imposed, SGM would not complete the sale and the most likely outcome would be the closure of St. Vincent, Seton, and Seton Coastside. The August Letter advised the Attorney General that SGM had submitted the only offer for the Hospitals, and that the "Debtors cannot

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sustain incurring ongoing operational losses to maintain the going-concern value of St. Vincent and Seton without the realistic prospect of a purchaser." August Letter at 14. The Debtors stated that upon the failure of the SGM Sale, they would be required to begin the process of closing St. Vincent, Seton, and Seton Coastside "almost immediately." *Id.*

Having overseen the Debtors' bankruptcy cases since their inception, the Court has become intimately familiar with the Debtors' operational and cash flow situation. As discussed above, the Debtors' statements regarding the necessity of closing certain of the Hospitals upon the failure of the SGM Sale are not an idle threat.

Imposition of the Additional Conditions will dramatically reduce the availability of healthcare services by causing the closure of three of the four Hospitals. In addition to the loss of healthcare services, closure of the Hospitals will destroy approximately 2900 jobs. Closure of the Hospitals will require the relocation of many patients suffering from critical conditions. None of this is in the public interest. **[Note 10]**

The Court understands that the Additional Conditions were imposed with the laudable objective of increasing the amount of healthcare services provided by the Hospitals. The Court can only assume that the Attorney General does not believe the representation that imposition of the Additional Conditions will result in a collapse of the SGM Sale. Unfortunately, the dire economic circumstances in which the Debtors now find themselves leaves the Court with no doubt that if the SGM Sale is not completed, three of the Hospitals will almost certainly close.

Because the Additional Conditions will reduce health care services by resulting in the closure of three of the Hospitals, imposition of the Additional Conditions was an abuse of the Attorney General's discretion.

B. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(4)

Under § 363(f)(4), the Hospitals may be sold free and clear of the Additional Conditions provided the Additional Conditions are "in bona fide dispute ..." A bona fide dispute exists if "there is an objective basis for either a factual or legal dispute as to the validity" of the interest at issue. *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991).

As discussed above, the Debtors contend that the Attorney General abused his discretion in imposing the Additional Conditions. Such a contention qualifies as a bona fide dispute regarding the Attorney General's authority to impose the Additional Conditions.

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A bona fide dispute exists for an additional reason. The Debtors have shown that by imposing the Additional Conditions, the Attorney General violated § 525.

Section 525 provides in relevant part:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... or another person with whom such ... debtor has been associated, solely because such ... debtor is or has been a debtor under this title ... or has not paid a debt that is dischargeable in the case under this title

In *In re Aurora Gas, LLC*, the court held that the State of Alaska violated § 525 by refusing to approve the debtor's sale of oil and gas leases unless the purchaser posted a bond of \$6 million to pay for the cost of plugging abandoned wells that the purchaser was not acquiring. *In re Aurora Gas, LLC*, No. A16-00130-GS, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017). The court held that by conditioning approval of the sale upon the posting of a bond, the State was attempting to collect upon the debtor's obligation to pay for the costs of plugging the abandoned wells. Imposition of such a condition, the court found, constituted impermissible discrimination against the debtor and its affiliate, the purchaser of the gas leases, in violation of § 525.

The facts of this case are strikingly similar. Here, the Attorney General has conditioned approval of the SGM Sale upon SGM assuming the obligation to operate the Hospitals in accordance with conditions similar to the 2015 Conditions that are an obligation of the Debtors. As discussed, the Additional Conditions require that SGM maintain and operate the Hospitals at current licensure and service levels. The Additional Conditions amount to an attempt by the Attorney General to enforce the obligations imposed by the 2015 Conditions. The 2015 Conditions are liabilities that are dischargeable in bankruptcy. By conditioning the transfer of the Hospitals upon the assumption of the Additional Conditions, which impose obligations equal to or in excess of the 2015 Conditions, the Attorney General is impermissibly discriminating against the Debtors in violation of § 525.

The fact that the Additional Conditions can be characterized as a regulatory obligation does not change the analysis. Regulatory obligations such as the Additional Conditions qualify as a "debt" under the Bankruptcy Code's broad definition of the

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term:

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Under the Bankruptcy Code, "debt" means "liability on a claim," 11 U.S.C. § 101(12), and "claim," in turn, includes any "right to payment," § 101(5)(A). We have said that "[c]laim" has "the broadest available definition," *Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), and have held that the "plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation," *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 559, 110 S.Ct. 2126 (1990). See also *Ohio v. Kovacs*, 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

F.C.C. v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 302–03, 123 S. Ct. 832, 839, 154 L. Ed. 2d 863 (2003).

C. The Debtors May Sell the Hospitals Free and Clear of Certain of the Additional Conditions Pursuant to § 363(f)(5)

Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

An interest "that can be reduced to a specific monetary value" falls within the scope of § 363(f)(5). *In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003); see also *In re Vista Marketing Grp. Ltd.*, 557 B.R. 630, 635 (Bankr. N.D. Ill. 2016) ("[O]ne would be hard-pressed to present a clearer example of a situation where the interest-holder could be compelled to accept a money satisfaction of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the District in its surcharge bill and disconnection notice.").

Among the Additional Conditions are requirements that each of the Hospitals provide specified levels of charity care and community benefit services. The Additional Conditions allow any shortfalls in charity care or community benefit services to be satisfied through deficiency payments to tax-exempt entities within the Hospitals' service area. The charity care and community benefit obligations can easily be reduced to a specific monetary value. The Debtors may sell the Hospitals free and clear of these obligations pursuant to § 363(f)(5).

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D. The Court Certifies a Direct Appeal of its Decision to the Ninth Circuit Court of Appeals

Title 28 U.S.C. § 158(d)(2) provides that the Bankruptcy Court, acting on its motion, may certify a direct appeal of an order to the Court of Appeals if the order "involves a matter of public importance" or if an immediate appeal of the order will "materially advance the progress of the case or proceeding."

Certification is warranted here. The interplay between the sale provisions of the Bankruptcy Code and the authority of the Attorney General to regulate the sale of assets subject to a charitable trust is a matter of public importance. The issue has arisen in past cases decided by this Court, *see In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. at 820 and *In re Verity Health Sys. of California, Inc.*, 598 B.R. at 283, and will continue to arise in future cases.

A direct appeal will materially advance the progress of the case. Closing of the SGM Sale is the lynchpin of the Debtors' plan of reorganization. However, under the APA, SGM is not obligated to close the sale unless the Debtors obtain a final, non-appealable order authorizing a sale free and clear. The Debtors are facing severe liquidity constraints and cannot afford to continue to operate the Hospitals for much longer. A direct appeal will facilitate resolution of this case by providing certainty regarding the permissibility of a sale free and clear far sooner than would otherwise be possible. If the Court's order is upheld, SGM can proceed to close the sale. If not, the Debtors can commence shutting down St. Vincent, Seton, and Seton Coastside.

III. Conclusion

Based upon the foregoing, the Court finds that the Debtors may sell the Hospitals to SGM, free and clear of the Additional Conditions. The sale may proceed under applicable nonbankruptcy law pursuant to § 363(f)(1) because the Debtors are entitled to a writ of mandate, pursuant to Cal. Civ. Proc. Code § 1094.5, that imposition of the Additional Conditions was an abuse of the Attorney General's discretion. A bona fide dispute as to the Attorney General's authority to impose the Additional Conditions exists under § 363(f)(4), because the Debtors (1) have shown that they are entitled to a writ of mandate reversing the Additional Conditions and (2) have shown that the Attorney General's imposition of the Additional Conditions violates § 525. Pursuant to §363(f)(5), the sale is free and clear of the charity care and community benefit obligations, which can be reduced to a monetary valuation.

The Court will prepare and enter an order certifying this matter for a direct appeal

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to the Ninth Circuit. The Debtors shall submit an order granting the Motion within seven days of the hearing.

Note 1

For a description of the sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018).

Note 2

The Approved Conditions are set forth in Schedule 8.6 of the APA.

Note 3

For a description of the difficulties associated with closing a much smaller hospital, see *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 829 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

Note 4

April 3, 2019 E-mail from Prime to the Debtors (Doc. No. 3333, Ex. 6).

Note 5

Id.

Note 6

St. Francis Conditions at § IV [Doc. No. 3188, Ex. B].

Note 7

Id. at § VI.

Note 8

See St. Vincent Conditions at § VI (setting forth a list of healthcare services that St. Vincent must maintain at current levels); Seton and Seton Coastside Conditions at § VI (same).

Note 9

This provision of BAPCPA does not appear in the Bankruptcy Code itself.

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Note 10

SEIU-UHW contends that it is economically feasible for SGM to operate the Hospitals while complying with the Additional Conditions. The record does not support SEIU-UHW's contention. SGM was the only bidder willing to purchase the Hospitals and has stated unequivocally that it will not complete its purchase if the Additional Conditions are imposed. These facts show that the Additional Conditions render operation of the Hospitals economically infeasible.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#100.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-12-19; 6-11-19; 8-14-19

Docket 1

***** VACATED *** REASON: CONTINUED 11-12-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon	Pro Se
BJ Mobile, Inc., a California	Pro Se
JETWORLD, Inc., a California	Pro Se
JW Wireless OKC, an Oklahoma	Pro Se

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CONT... JW Wireless Inc.

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JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se
Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his	Represented By Thomas J Eastmond
---------------------------------	-------------------------------------

Trustee(s):

John J Menchaca (TR)	Represented By Robert P Goe
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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01386. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Paul Shangha. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 4-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01387 Elissa D. Miller, solely in her capacity as chapte v. OJ Insulation, L.P., a

#102.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01387. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against OJ Insulation, L.P., a Delaware limited partnership. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 7-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

OJ Insulation, L.P., a Delaware

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01388 Elissa D. Miller, solely in her capacity as chapte v. LC Engineering Group,

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01388. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against LC Engineering Group, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 3-20-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

LC Engineering Group, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01389 Elissa D. Miller, solely in her capacity as chapt v. Creative Sound & Vision,

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01389. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Creative Sound & Vision, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 3-20-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Creative Sound & Vision, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01390 Elissa D. Miller, solely in her capacity as chapte v. Mulligan's Painters, Inc.,

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01390. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mulligan's Painters, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mulligan's Painters, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: DISMISSED 9-6-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Premium Energy Solutions, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01392 Elissa D. Miller, solely in her capacity as chapte v. State Plastering, Inc., a

#107.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01392. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against State Plastering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: DISMISSED 7-29-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

State Plastering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01393 Elissa D. Miller, solely in her capacity as chapte v. Sunland Wood Products,

#108.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01393. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Sunland Wood Products, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 10-7-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Sunland Wood Products, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01394 Elissa D. Miller, solely in her capacity as chapte v. Grandmaison

#109.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01394. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Grandmaison Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 3-10-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Grandmaison Construction, Inc., a

Represented By
Mark T Young

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

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Jessica Vogel

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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01395 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#110.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01395. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01396 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01396. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation, Cemex Construction Materials Pacific, LLC, a Delaware limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 3-20-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Cemex Construction Materials

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

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Chapter 7

Asa S Hami
Jessica Vogel

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11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01397 Elissa D. Miller, solely in her capacity as chapte v. Allied Roofing and

#112.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01397. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Allied Roofing and Waterproofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Allied Roofing and Waterproofing,

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#113.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: DISMISSED 9/26/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01399 Elissa D. Miller, solely in her capacity as chapte v. Old World Precast, Inc., a

#114.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01399. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Old World Precast, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-10-20 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Old World Precast, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01400 Elissa D. Miller, solely in her capacity as chapte v. RP Designs, Inc., a

#115.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01400. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against RP Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

RP Designs, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01401 Elissa D. Miller, solely in her capacity as chapte v. Truskett et al

#116.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01401. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Robert L. Truskett, Robert L. Truskett Roofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Robert L. Truskett

Pro Se

Robert L. Truskett Roofing, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01402 Elissa D. Miller, solely in her capacity as chapte v. Frank H. Roll-Off

#117.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01402. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Frank H. Roll-Off Service, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Frank H. Roll-Off Service, an

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#118.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE WILL BE HEARD TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01405 Elissa D. Miller, solely in her capacity as chapte v. American Express

#119.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01405. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against American Express Company, a New York Corporation, American Express Travel Related Services Company, Inc., a New York Corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 2-11-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

American Express Company, a New

Pro Se

American Express Travel Related

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#120.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01407 Elissa D. Miller, solely in her capacity as chapte v. HD Supply Construction

#121.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01407. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against HD Supply Construction Supply Group, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 3-10-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

HD Supply Construction Supply

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01408 Elissa D. Miller, solely in her capacity as chapte v. Cook Development

#122.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01408. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Cook Development Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Cook Development Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapte v. Hankey Capital, LLC, a

#123.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONT'D TO 5-12-20 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#124.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONT'D TO 5-12-2020 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01411 Elissa D. Miller, solely in her capacity as chapte v. Mumford

#125.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01411. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Scott Mumford. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Post-Petition Transfers, (3) Preservation of Preferential and Post-Petition Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Scott Mumford

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01412 Elissa D. Miller, solely in her capacity as chapte v. Danmar Steel, Inc., a

#126.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01412. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Danmar Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Danmar Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapte v. JSA Engineering, Inc., a

#127.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01414 Elissa D. Miller, solely in her capacity as chapte v. B&R Construction, Inc., a

#128.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01414. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against B&R Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: DISMISSED 8-26-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

B&R Construction, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01415 Elissa D. Miller, solely in her capacity as chapte v. Certified Tile, Inc., a

#129.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01415. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Certified Tile, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Certified Tile, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01416 Elissa D. Miller, solely in her capacity as chapte v. J.M.I. Steel, Inc., a

#130.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01416. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against J.M.I. Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

J.M.I. Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01417 Elissa D. Miller, solely in her capacity as chapte v. JC Drywall Designs, Inc.,

#131.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01417. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JC Drywall Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: COTNTINUED 3-10-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JC Drywall Designs, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01418 Elissa D. Miller, solely in her capacity as chapte v. JH Plumbing

#132.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01418. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JH Plumbing Corporation, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 7-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JH Plumbing Corporation, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01419 Elissa D. Miller, solely in her capacity as chapte v. Acosta Stone, an

#133.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01419. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Acosta Stone, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Acosta Stone, an unknown business

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01420 Elissa D. Miller, solely in her capacity as chapte v. Vista General

#134.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01420. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Vista General Engineering Company, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Vista General Engineering

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-11868 Maria Guadalupe Ortiz Santos

Chapter 7

Adv#: 2:18-01403 Yoo v. Gutierrez

#135.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01403. Complaint by Timothy J. Yoo against Eduardo Infanzon Gutierrez. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfer [11 U.S.C. §§ 542, 544, 550 and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Burstein, Richard)

Docket 1

*** VACATED *** REASON: CONTINUED 5-12-20 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Guadalupe Ortiz Santos

Represented By
Peter M Lively

Defendant(s):

Eduardo Infanzon Gutierrez

Pro Se

Plaintiff(s):

Timothy J. Yoo

Represented By
Richard Burstein

Trustee(s):

Timothy Yoo (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01425 Cortes v. LeClair

#136.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01425. Complaint by Alvaro Cortes against Jeremy Wyatt LeClair. false pretenses, false representation, actual fraud)),(11 (Recovery of money/property - 542 turnover of property)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Weissman, I)

Docket 1

***** VACATED *** REASON: PRETRIAL 1-14-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#137.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

Docket 1

***** VACATED *** REASON: CONTINUED 12-10-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-23852 Du Un Kim

Chapter 7

Adv#: 2:18-01437 LA Financial Credit Union v. Kim et al

#138.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01437. Complaint by LA Financial Credit Union against Du Un Kim. false pretenses, false representation, actual fraud)) (Anaya, Alana)

Docket 1

***** VACATED *** REASON: DISMISSED 3-11-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Du Un Kim Pro Se

Defendant(s):

Du Un Kim Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

LA Financial Credit Union Represented By
Alana B Anaya

Trustee(s):

Brad D Krasnoff (TR) Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#139.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18; 11-13-18; 3-12-19; 5-14-19; 6-11-19; 8-13-19

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED ON 10-3-19**

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Raviner Kuma Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90

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Hearing Room 1568

11:00 AM

CONT... **Ravinder Kumar Bhatia**

Chapter 11

days, to allow him to investigate the facts of this action, and potentially substitute in as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

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Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#140.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 3-12-19

Docket 1

***** VACATED *** REASON: CASE DISMISSED 8-6-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#141.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 4-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01433 Xue v. Verity Health System of California Inc et al

#142.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01433. Complaint by Baoru Xue against Verity Health System of California Inc , St. Francis Medical Center . (12 (Recovery of money/property - 547 preference)) ,(66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: DISMISSED 1-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

Verity Health System of California

Pro Se

St. Francis Medical Center

Pro Se

Plaintiff(s):

Baoru Xue

Represented By

Monica A Blut

**United States Bankruptcy Court
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Tuesday, October 15, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#143.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
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Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:19-17062 Shamim Ahemmed

Chapter 7

#1.00 Hearing
RE: [9] Debtor's Motion to Avoid Lien

Docket 9

***** VACATED *** REASON: ORDER ENTERED 9-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shamim Ahemmed

Represented By
Julie J Villalobos

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#2.00 Show Cause Hearing re [230] Order To Show Cause Re Entry Of Final Decree And Closing Of Case

Docket 0

Tentative Ruling:

10/15/2019

The court will enter an order entering a discharge and final decree.

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno

**United States Bankruptcy Court
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Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#3.00 Hearing re Amended Disclosure Statement

Docket 0

***** VACATED *** REASON: DUPLICATE OF ENTRY NO. 4**

Tentative Ruling:

10/15/2019

See Cal. No. 4, incorporated in full by reference.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

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10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#4.00 Hearing re [82] *Second Amended Disclosure Statement Describing Debtors First Amended Chapter 11 Plan Of Reorganization Dated July 26, 2019*

FR. 7-17-19; 9-4-19

Docket 0

Tentative Ruling:

10/15/2019

The Court will require the Debtors to make a few minor amendments to the Amended Disclosure Statement, as discussed below. Otherwise, the Court finds that the Disclosure Statement contains adequate information.

Pleadings Filed and Reviewed

1. Individual Debtors' First Amended Disclosure Statement in Support of First Amended Plan of Reorganization [Doc. No. 82]
2. Individual Debtor's [sic] Chapter 11 First Amended Plan of Reorganization [Doc. No. 83]
3. Debtors' Notice of Hearing on Adequacy of First Amended Disclosure Statement Describing Debtors' First Amended Chapter 11 Plan of Reorganization Dated July 26, 2019 [Doc. No. 84]
4. Individual Debtor's [sic] Chapter 11 Second Amended Plan of Reorganization [Doc. No. 97] (the "Amended Plan")
5. Debtors' Notice of Hearing on Adequacy of Second Amended Disclosure Statement Describing Debtors' Second Amended Chapter 11 Plan of Reorganization [Doc. No. 98]
6. Individual Debtors' Second Amended Disclosure Statement in Support of Second Amended Plan of Reorganization [Doc. No. 96] (the "Amended Disclosure Statement")
7. As of the preparation of this tentative ruling, no opposition is on file

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Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors"), filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors sought bankruptcy protection after experiencing several years of financial hardship predicated by Mr. Acevedo's unexpected loss of employment. Both Debtors are now employed and generate regular monthly income. The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$3,100 in monthly income [*see* Doc. No. 85].

On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors submitted their First Amended Disclosure Statement on July 26, 2019, which the Court denied for reasons specified in its tentative ruling [Doc. No. 89] and discussed below. The Debtors now seek approval of their Second Amended Disclosure Statement ("Amended Disclosure Statement"). Below is a description of the material provisions of the Debtors' Amended Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$6,000 on the Effective Date, consisting of \$4,000 for remaining Chapter 11 fees and \$2,000 for administrative fees owed to former counsel. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$7,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of \$1,968, in full, plus 6% interest, within five years from the Petition Date, by making

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10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

equal monthly installments of \$32.50 beginning on the Effective Date.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. Accordingly, the Debtors propose to pay Honda's secured claim in full, plus 6.75% interest, by making monthly installment payments of \$314 over a five-year period. Honda's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$29,776.01. The Debtors propose to pay this class 70% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$347.39. This class is impaired and entitled to vote on the Amended Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- i. Approximately \$9,071.81 anticipated cash on hand on the Effective Date.
- ii. A one-time \$7,000 family contribution.
- iii. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and

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Chapter 11

history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However,

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“[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court previously found the First Amended Disclosure Statement to be inadequate in the following regards: 1) financial projections supporting the plan over its 5-year duration were not supplied; 2) the Debtors did not account for an increase in their rental income for the month of July 2019, as provided in the Exhibit A1 calculations; and 3) Debtors’ proposed distribution to general unsecured creditors was confusingly described.

The Court determines that the Debtors have sufficiently addressed two of the issues listed above. First, the Debtors provided budget projections for the next five years, as set forth in Exhibit A3. Second, the Debtors reworked their A1 calculations. The revised Exhibit A1 form specifies rental income totaling \$2,450 as of September 10, 2019, which is consistent with a monthly rental income of \$2,120 as indicated on Debtors’ latest monthly operating report for August 2019. Exhibit A1 accordingly calculates Debtors’ monthly net income at \$357.27. This figure is consistent with Debtors’ future disposable monthly income of \$357.27, as stated in Part 3.C. of the Amended Disclosure Statement.

However, Debtors’ proposed distribution to the class of unsecured creditors remains unclear. The Court will note that it is clear that payments to general unsecured creditors will be tendered on a *monthly*, not *quarterly* basis, but Debtors are still unable to consistently represent exactly how much creditors will be paid. Part 3.C. of the Amended Disclosure Statements provides unsecured creditors will be paid \$357 (100% of the Debtors’ future disposable income). This payment figure is consistent with the amount represented in Exhibit A1. However, the Debtors’ supporting declaration provides that the payment to unsecured creditors will instead be \$347.39 per month, which the Court will point out is 70% of \$29,776.01. Based on the terms proposed in the Amended Disclosure Statement, the \$347.39 payment appears to be the correct figure.

For the sake of sufficiency, the Court further remarks on other discrepancies discovered in the Amended Disclosure Statement as follows:

1. Debtors apparently did not strike out the language stating "(Payment to Unsecured Creditors)" in Exhibit A1 as unambiguously instructed in the

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- Court's previous tentative ruling.
2. Certain figures provided in the liquidation analysis of Part 4 are inaccurate. Debtors claim that the estimated percentage of unsecured claims that would be paid out in liquidation is 0%. This statement is plainly wrong. Based on other figures provided in Part 4, there would be approximately \$3,483.45 in liquidation funds available to unsecured creditors. This amount is about 11.7% of the general unsecured claims. Debtors are further directed to remove the parentheses around the figure of \$3,483.45 in Part 4, the liquidation value available to unsecured creditors. This figure should not be represented as a negative number.
 3. Debtors did not individually sign the Amended Disclosure Statement under penalty of perjury. There are three signature lines on the last page of the form F 2081-1.DISCLSR.STMT: one immediately following the last section of the disclosure form, and two lines after the language of "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct." The Debtors signed the former, but not the latter.

The Court determines that these discrepancies are either immaterial or the result of typographical errors. Accordingly, by no later than **October 23, 2019**, and prior to disseminating the voting package, the Debtor is directed to file a third amended disclosure statement that corrects the issues discussed above.

Subject to the minor amendments discussed above, the Court finds that the Disclosure Statement contains adequate information. Among other things, the Amended Disclosure Statement describes: (1) the factors precipitating the Chapter 11 filing, (2) a description of the Debtors' assets and their estimated values, (3) the classification structure of the Plan, (4) an amended Liquidation Analysis and monthly net income calculations, (5) risk factors, (6) estimated administrative expenses, (7) a five-year budget projection, and (8) the means for executing the Plan.

On a separate matter, in its previous tentative ruling, the Court cautioned Debtors regarding certain plan confirmation issues. At least one issue remains outstanding. The Debtors propose to retain their interest in Rental Property, while paying general unsecured creditors 70% of their claims, without interest, and without providing a new value contribution. That Debtors are now proposing to pay a noticeably higher

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percentage of general unsecured claims than previously proposed does not mean that the issue of absolute priority is resolved. Accordingly, the Debtors should be aware that the absolute priority rule will not be satisfied unless Class 6(b) votes to accept the Plan.

III. Conclusion

The Amended Disclosure Statement is APPROVED, subject to the correction of certain issues set forth above.

The following dates and deadlines will apply to solicitation and confirmation of the Debtor's Plan:

- 1) A hearing will be held on the confirmation of the Debtors' Chapter 11 Plan of Reorganization on **January 15, 2020, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan and, if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **October 28, 2019**.
- 3) **November 27, 2019** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.
- 4) **December 20, 2019** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtors have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **December 29, 2019** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **January 6, 2020** is fixed as the last day on which the Debtors may file and

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10. Debtors' Notice of Hearing on Adequacy of First Amended Disclosure Statement Describing Debtors' First Amended Chapter 11 Plan of Reorganization Dated July 26, 2019 [Doc. No. 84]
11. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors"), filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). The Debtors sought bankruptcy protection after experiencing several years of financial hardship predicated by Mr. Acevedo's unexpected loss of employment. Both Debtors are now employed and generate regular monthly income. The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$3,100 in monthly income [see Doc. No. 85].

On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors presently seek approval of their First Amended Disclosure Statement (the "Amended Disclosure Statement"). Below is a description of the material provisions of the Debtors' Amended Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$14,529 on the Effective Date. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$7,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of

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\$1,968, in full, plus 6% interest, within five years from the Petition Date, by making equal monthly installments of \$32.50 beginning on the Effective Date.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. Accordingly, the Debtors propose to pay Honda's secured claim in full, plus 6.75% interest, by making monthly installment payments of \$314 over a five-year period. Honda's claim is impaired, and it is entitled to vote on the Amended Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$29,776.01. The Debtors propose to pay this class 4% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$19.85. This class is impaired and entitled to vote on the Amended Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- iv. Approximately \$8,917.81 anticipated cash on hand on the Effective Date.
- v. A one-time \$7,000 family contribution.
- vi. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind,

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and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

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In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Amended Disclosure Statement is inadequate in the following respects:

1. The Amended Disclosure Statement is not supported by financial projections. The Debtors are directed to submit financial projections for the 5-year duration of the plan in support of the second amended disclosure statement.
2. Part 3.C. states that the Debtors’ future disposable income will be \$39.27, as set forth in Exhibit A1. The Debtors also disclose that their monthly rental income from the Rental Property increased in July 2019. However, it appears that the Debtors have not included the increased rental income figure in their Exhibit A1 calculations. Therefore, the Debtors should submit a revised Exhibit A1.
3. The proposed distribution for Class 6(b) general unsecured creditors is not clear. Part 1.D states that Class 6(b) creditors will be paid 4% of their allowed claims without interest in equal monthly installments over 5 years. However, the Debtors also discuss payments to this class in terms of quarterly payments. *See* Acevedo Declaration, ¶ 33. The Court also notes that Paragraph 18.c. of Exhibit A1 states that payments to unsecured creditors will be \$39.27. It appears the correct figure is the \$1,191.04 figure (4% of \$29,776.01 = \$1,191.04), but the Debtors should strike the language in Paragraph 18.c of Exhibit A1 that states "(Payment to Unsecured Creditors)," and also clarify whether payments to Class 6(b) will be made on a monthly or quarterly basis.

Additionally, although the following are plan confirmation issues, the Debtors should be aware of the following issues:

1. The Debtors have not attached a declaration from Catalina Vasquez evidencing her financial ability to make the proposed \$7,000 cash contribution. In support of any plan confirmation brief, the Debtors should be prepared to attach evidence to support this payment.
2. The Debtors are proposing to retain their interest in the Rental Property, while only paying general unsecured creditors 4% of their claims and not providing any new value contributions. Accordingly, the Debtors should be aware that they will not be able to satisfy the absolute priority rule unless Class 6(b) votes to accept the Plan.

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III. Conclusion

For the reasons set forth above, the approval of the Amended Disclosure Statement is DENIED. The Debtors are directed to file a second amended disclosure statement and second amended plan by no later than **September 20, 2019** and self-calendar a hearing for **October 16, 2019 at 10:00 a.m.**

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

7/16/2019

For the reasons set forth below, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than **July 26, 2019**, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.**

Pleadings Filed and Reviewed

12. Individual Debtor's [sic] Disclosure Statement in Support of Plan of Reorganization [Doc. No. 65] (the "Disclosure Statement")
13. Individual Debtor's [sic] Chapter 11 Plan of Reorganization [Doc. No. 66] (the "Plan")
14. Debtors' Notice of Hearing on Adequacy of Disclosure Statement Describing Debtors' Chapter 11 Plan of Reorganization Dated May 31, 2019 [Doc. No. 67]

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15. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtors-in-possession, Samuel Antonio Acevedo and Lucy Acevedo (together, the "Debtors") filed this voluntary Chapter 11 case on April 3, 2018 (the "Petition Date"). Both Debtors are employed and generate regular monthly income. The Debtors' primary asset consists of a rental property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Rental Property"), which they rent out for an additional \$2,450 in monthly income.

On March 13, 2019, the Debtors obtained an order granting their motion to value the Rental Property at \$435,000 for purposes of plan confirmation [Doc. No. 45]. On March 19, 2019, the Debtors obtained an order granting their motion to value their 2016 Honda Accord (the "Vehicle") at \$15,977 for purposes of plan confirmation, which resulted in the bifurcation of American Honda Finance's claim into a secured claim of \$15,977 and an unsecured claim of \$3,731.60 [Doc. No. 50] (the "Vehicle Valuation Order").

The Debtors presently seek approval of their Disclosure Statement. The following provisions are the material provisions of the Debtors' Plan:

Administrative Claims

The Debtors anticipate that administrative fees for professionals will be approximately \$15,968 on the Effective Date. The Debtors propose to pay all administrative claims in full, on the Effective Date, from available cash on hand and with the assistance of a one-time \$6,000 family contribution payment.

Priority Tax Claims

The Debtors propose to pay the Internal Revenue Service's (the "IRS") claim of \$1,968 in full over five years from the Petition Date, with 6% interest, in equal monthly installments of \$32.50.

Class 5(a) – Secured Claim of Wells Fargo Bank, National Association ("Wells Fargo")

Wells Fargo holds a first-priority deed of trust against the Rental Property securing

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debt in the approximate amount of \$382,478.36. The Debtors propose to pay Wells Fargo's claim in full, plus 5% interest, by making monthly installment payments of \$2,053.23 over a thirty-year period, beginning October 1, 2019. Wells Fargo's claim is impaired, and it is entitled to vote on the Plan.

Class 5(b) – Secured Claim of American Honda Finance Corporation ("Honda")

Honda holds a perfected security interest in the Vehicle. Pursuant to the Vehicle Valuation Order, Honda holds a secured claim of \$15,977 and an unsecured claim of \$3,731.60. However, the Debtors are proposing to pay Honda the full amount of its \$19,708.60 claim, plus 6.75% interest, by making monthly installment payments of \$388 over a five-year period, beginning October 1, 2019. Honda's claim is impaired, and it is entitled to vote on the Plan.

Class 6(b) – General Unsecured Claims

This class consists of all allowed general unsecured claims, which the Debtors estimate hold aggregate claims in the amount of \$26,044.41. The Debtors propose to pay this class 4% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$18.48. This class is impaired and entitled to vote on the Plan.

Means of Implementation

The Debtors' Plan will be funded from the following sources:

- vii. Approximately \$10,477 in anticipated cash on hand on the Effective Date.
- viii. A one-time \$6,000 family contribution.
- ix. Future disposable income for 5 years. The Debtors anticipate having sufficient income to cover all proposed plan payments. After deducting expenses and making all of the foregoing proposed Plan payments, the Debtors projections indicate that they will only have approximately \$1/month in net monthly income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and

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history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However,

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“[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement is inadequate in the following respects:

1. The Debtors’ Liquidation Analysis (Disclosure Statement, Part 4, page 5) does not contain adequate information because it appears the only asset the Debtors have included in their "Net liquidation value of Debtors’ assets" is the anticipated cash on hand as of the Effective Date. While the Debtors did attach a copy of their Schedules A/B, they failed to include a comprehensive liquidation analysis for each asset. The Court finds this particularly troubling because there appears to be approximately \$52,521.64 in equity in the Rental Property and the Debtors have not included any analysis to support their conclusion that the Rental Property would have a \$0.00 liquidation value if the case were converted to a Chapter 7
2. The Disclosure Statement does not contain any discussion of the events which led to the bankruptcy filing, therefore creditors are unable to adequately evaluate the risks associated with voting in favor of the Debtors’ Plan.
3. The Debtors’ proposal to pay Honda the full amount of its Proof of Claim despite the Court’s Vehicle Valuation Order bifurcating \$3,731.60 of the claim into an unsecured claim is unsupported by any meaningful explanation. The Debtors appear to be attempting to overpay Honda by paying its \$3,731.60 unsecured claim in full, with interest, while paying other similarly situated unsecured creditors only 4% of their claims. Accordingly, the Debtors’ amended disclosure statement either needs to amend its proposed treatment of Honda’s claim or provide a meaningful explanation for creditors to evaluation whether this payment is fair and equitable.

For the foregoing reasons, the Disclosure Statement does not contain adequate information and must be amended.

Additionally, although the following are plan confirmation issues, the Debtors should be aware of the following issues:

3. The Debtors have not attached a declaration or declaration(s) from the family member(s) contemplated to make the \$6,000 family contribution payment or any evidence to support the financial ability of that person or persons to make

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such payment. In support of any plan confirmation brief, the Debtors should be prepared to attach evidence to support this payment.

4. The Debtors' net monthly income after making all anticipated Plan payments is less than \$1. Therefore, the Debtors' plan confirmation brief must include adequate briefing to satisfy this Court that confirmation of the Plan is not likely to be followed by liquidation in the event any unforeseen expenses arise.
5. The Debtors are proposing to retain their interest in the Rental Property, while only paying general unsecured creditors 4% of their claims and not providing any new value contributions. Accordingly, the Debtors should be aware that they will not be able to satisfy the absolute priority rule unless Class 5(b) votes to accept the Plan.

III. Conclusion

For the reasons set forth above, approval of the Disclosure Statement is DENIED. The Debtors are directed to file a first amended disclosure statement by no later than **July 26, 2019**, and self-calendar a hearing for **September 4, 2019 at 10:00 a.m.** Oppositions, if any, are due by August 21, 2019. The deadline for the Debtors to file a reply to any timely filed oppositions is August 28, 2019.

The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey

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Joint Debtor(s):

Lucy Acevedo

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

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2:18-20151 Verity Health System of California, Inc.

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#5.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

Docket 1857

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

Docket 0

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1849

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By
Paul J Laurin
David M Powlen
Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 2144

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Susan I Montgomery

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1881

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1882

*** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

Docket 1930

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

Docket 1949

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1965

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [2058] Cure Objection Asserted by **DaVita Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 2058

Tentative Ruling:

10/15/2019

Hearing VACATED. The Cure Objection filed by DaVita, Inc. is now moot because Strategic Global Management, Inc. has elected not to designate for assumption and assignment the agreement to which DaVita's objection pertains. See Doc. No. 3123 at para. 4.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

DaVita Inc.

Represented By

Michael S Winsten

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

Docket 1954

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1850

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1940

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1866

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1890

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1873

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

Docket 1863

*** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19

Docket 0

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19

Docket 2558

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19

Docket 2557

***** VACATED *** REASON: CONTINUED 10-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 HearingRE: [3140] Motion Debtors' Notice of Motion and Motion for Order Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM Information Management Services of California, LLC; Memorandum of Points and Authorities; Declaration of Richard G. Adcock

Docket 3140

Tentative Ruling:

10/15/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Order Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM Information Management Services of California, LLC [Doc. No. 3140] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3130, 3131, 3140 and 3141 [Doc. No. 3349]
- 2) Limited Objection of Cerner Corporation to Debtors' Motion for Order Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM Information Management Services of California, LLC [Doc. No. 3202]
- 3) Official Committee of Unsecured Creditors' Response in Conditional Support of Debtors' Motion for Order Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM Information Management Services of California, LLC
- 4) Stipulation Between Debtors and Cerner Corporation on Motion for Order Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM Information Management Services of California, Inc.

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

cases. Doc. No. 17.

The Debtors seek authorization to enter into an agreement with GRM Information Management Services of California, LLC (“GRM”), under which GRM will provide records retention services to the Debtors. As part of their wind down, the Debtors need to consolidate their remaining paper records at a single location with a single records retention and retrieval provider going forward, and have that provider maintain certain electronic records which may be necessary to respond to patient or regulatory inquiries. GRM will provide these services for the next seven years for a total cost of approximately \$500,000, with an option to extend.

The Official Committee of Unsecured Creditors (the “Committee”) supports the Motion, provided that the Committee and its successors in interest are allowed to access financial records stored by GRM.

Cerner Corporation (“Cerner”), which provides medical records services to the Debtors through copyrighted software, filed a limited objection to the Motion. Cerner objects to any unauthorized use of its licensed software by GRM. Subsequent to the filing of Cerner’s limited objection, the Debtors and Cerner executed a stipulation providing for the withdrawal of the limited objection.

No other opposition to the Motion is in file.

II. Findings and Conclusions

Under § 363(b), the Debtors are authorized to use estate property outside the ordinary course of business, subject to Court approval. The Debtors must articulate a business justification for the proposed use of estate property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.*

Here, the Debtors have demonstrated ample business justification for entering into the records retention agreement with GRM. The Debtors must maintain records in order to respond to patient and regulatory inquiries. Consolidating all remaining records with a single provider is the most efficient means of accomplishing this necessity.

The Court agrees that the Committee, and its successors in interest, should be provided access to any financial records stored by GRM. The Debtors shall include language in the order to this effect.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit an order incorporating this tentative ruling by reference within seven days

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 16, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.
of the hearing.

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:00 AM

2:19-17806 Harold James Mathieu and Patricia Mathieu

Chapter 7

#1.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2915 Nissan Pathfinder, VIN: 5N1AR2MN0FC677645 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

10/17/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:00 AM

CONT... Harold James Mathieu and Patricia Mathieu Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Harold James Mathieu

Represented By
Marshall S Tierney

Joint Debtor(s):

Patricia Mathieu

Represented By
Marshall S Tierney

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:00 AM

2:19-20322 Amber Leah Cook

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: U 2010 MAZDA CX-7 with Proof of Service. (Zahradka, Robert)

Docket 9

Tentative Ruling:

10/17/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 21, 2019

Hearing Room 1568

10:00 AM

CONT... Amber Leah Cook

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Amber Leah Cook

Represented By
Gregory M Shanfeld

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#3.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10401 S Avalon Blvd., Los Angeles, California 90003 . (Bach, Julian)

Docket 13

Tentative Ruling:

10/17/2019

For the reasons set forth herein, the Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion") is **CONTINUED to November 6, 2019 at 10:00 a.m.**

The Court determines that issues raised in two outstanding motions—*Trustee's Proposed Abandonment of Property Pursuant to 11 U.S.C. 554 and Local Bankruptcy Rule 6007-1* ("Trustee's Motion") [Doc. No. 15] and *Debtor's Motion to Convert Case under 11 U.S.C. §§ 706(a) or 1112(a)* ("Debtor's Motion") [Doc. No. 17]—are germane to the substantive arguments discussed herein. Therefore, both of the above-referenced motions shall be concurrently heard with the Motion on **November 6, 2019 at 10:00 a.m.**, subject to the following briefing schedule:

Oppositions to the Trustee's Motion, if any, shall be filed no later than **October 18, 2019**; and replies, if any, shall be filed no later than **October 25, 2019**.

Oppositions to the Debtor's Motion, if any, shall be filed no later than **October 21, 2019**; and replies, if any, shall be filed no later than **October 28, 2019**.

The Court will not review any further pleadings concerning the Motion.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 21, 2019

Hearing Room 1568

10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#4.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9022 Compton Avenue, Los Angeles, CA 90002 . (Krause-Leemon, David)

Docket 11

Tentative Ruling:

10/17/2019

For the reasons set forth herein, the Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion") is CONTINUED to **November 6, 2019 at 10:00 a.m.**

First, Movant's proof of service [Doc. 11] does not reflect that the Motion was served on all lienholders as required by Local Bankruptcy Rule 4001-1(c)(1)(C)(iv). By no later than **October 23, 2019**, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Notice on all interested parties pursuant to applicable federal and local rules; and (iii) file a proof of service evidencing compliance with this ruling.

Second, the Court determines that issues raised in two outstanding motions—*Trustee's Proposed Abandonment of Property Pursuant to 11 U.S.C. 554 and Local Bankruptcy Rule 6007-1* ("Trustee's Motion") [Doc. No. 16] and *Debtor's Motion to Convert Case under 11 U.S.C. §§ 706(a) or 1112(a)* ("Debtor's Motion") [Doc. No. 17]—are germane to the substantive arguments discussed herein. Therefore, both of the above-referenced motions shall be concurrently heard with the Motion on **November 6, 2019 at 10:00 a.m.**, subject to the following briefing schedule:

Oppositions to the Trustee's Motion, if any, shall be filed no later than **October 18, 2019**; and replies, if any, shall be filed no later than **October 25, 2019**.

Oppositions to the Debtor's Motion, if any, shall be filed no later than **October 21, 2019**; and replies, if any, shall be filed no later than **October 28, 2019**.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 21, 2019

Hearing Room 1568

10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

The Court will not review any further pleadings concerning the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 21, 2019

Hearing Room 1568

10:30 AM

9:17-10920 RS Construct, Inc.

Chapter 11

Adv#: 9:18-01014 RS Construct, Inc. v. The Walt Disney Company et al

#100.00 Mediation conference

(Hon. Deborah Saltzman, presiding)

fr. 10-11-19

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

RS Construct, Inc.

Represented By
Jeremy Faith
Montserrat Morales

Defendant(s):

The Walt Disney Company

Pro Se

Disney Incorporated

Pro Se

Walt Disney Parks and Resorts U.S.,

Represented By
Patrick Bollig
Jeffrey W Griffith

Plaintiff(s):

RS Construct, Inc.

Represented By
Noreen A Madoyan
Montserrat Morales
Mitchell B Ludwig

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:10-64833 Avishay Weinberg

Chapter 7

Adv#: 2:11-01901 Forward Progress Management Real Estate, Inc. v. Weinberg

#1.00 Hearing re [123] Application for appearance and examination re enforcement of judgment re AVISHAY WEINBERG

fr. 7-17-19

Docket 0

*** VACATED *** REASON: WITHDRAWAL FILED 10-11-19

Tentative Ruling:

7/16/2019

Tentative Ruling:

Appearances required.

In its order requiring the judgment debtor to appear for examination, the Court ordered the judgment creditor to "file a proof of service establishing that the *Order for Appearance and Examination* has been served upon the examinee in accordance with the requirements of Cal. Code Civ. P. § 708.110" by no later than seven days prior to the judgment debtor examination. No such proof of service is on file.

Cal. Code Civ. P. § 708.110 requires the judgment creditor to personally serve the order compelling the judgment debtor to appear for examination by not less than ten days before the date set for the examination. The judgment creditor must appear to advise the Court of whether the *Order for Appearance and Examination* was properly served.

Party Information

Debtor(s):

Avishay Weinberg

Represented By
Charles Shamash

Defendant(s):

Avishay Weinberg

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

CONT... Avishay Weinberg

Chapter 7

Plaintiff(s):

Forward Progress Management Real

Represented By
Bradley J Pizer

Trustee(s):

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:10-64842 Pedro Gabriel Tauber

Chapter 7

Adv#: 2:11-01899 Forward Progress Management Real Estate, Inc. v. Tauber

#2.00 Hearing re [143] Appearance and Examination re: Enforcement of Judgment re
PEDRO GABRIEL TAUBER

fr: 7-17-19

Docket 0

*** VACATED *** REASON: WITHDRAWAL FILED 10-11-19

Tentative Ruling:

7/16/2019

Tentative Ruling:

Appearances required.

In its order requiring the judgment debtor to appear for examination, the Court ordered the judgment creditor to "file a proof of service establishing that the *Order for Appearance and Examination* has been served upon the examinee in accordance with the requirements of Cal. Code Civ. P. § 708.110" by no later than seven days prior to the judgment debtor examination. No such proof of service is on file.

Cal. Code Civ. P. § 708.110 requires the judgment creditor to personally serve the order compelling the judgment debtor to appear for examination by not less than ten days before the date set for the examination. The judgment creditor must appear to advise the Court of whether the *Order for Appearance and Examination* was properly served.

Party Information

Debtor(s):

Pedro Gabriel Tauber

Represented By
Charles Shamash

Defendant(s):

Pedro Gabriel Tauber

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

CONT... Pedro Gabriel Tauber

Chapter 7

Plaintiff(s):

Forward Progress Management Real

Represented By
Bradley J Pizer

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#3.00 APPLICANT: John J Menchaca, Trustee

Hearing re [86] and [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/21/2019

The Court notes the challenge raised by Debtors against the fees requested by the Trustee's general counsel, which will be separately considered. Notwithstanding the above-referenced objection, this Court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$36,845.46 [*see* Doc. No. 87]

Total Expenses: \$217.60 [*see* Doc. No. 87]

Total U.S. Bankruptcy Court Charges: \$700 [*see* Doc. No. 87]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#4.00 APPLICANT: Law APC Offices of Wesley H Avery, Attorney for Trustee Fees

Hearing re [86] and [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/21/2019

For the reasons set forth below, the Court finds that Applicant is entitled to fees of **\$78,510** and expenses of **\$651.85** for work performed in connection with this case.

Pleadings Filed and Reviewed

1. Final Fee Application for Compensation and Reimbursement of Expenses Incurred by Attorney for Chapter 7 Trustee [Doc. No. 84] (the "Fee Application")
2. Notice of Trustee's Final Report and Applications for Compensation [Doc. No. 86]
3. Declaration of John J. Menchaca, Chapter 7 Trustee in Support of the Final Fee Application for Compensation and Reimbursement of Expenses Incurred by Attorney for Chapter 7 Trustee [Doc. No. 90]
4. Debtors' Objection to Final Fee Application for Compensation and Reimbursement of Expenses Incurred by Attorney for Chapter 7 Trustee [Doc. No. 93] (the "Opposition")
5. Reply to Debtors' Objection to Final Fee Application for Compensation and Reimbursement of Expenses Incurred by Attorney for Chapter 7 Trustee [Doc. No. 94] (the "Reply")

I. Facts and Summary of Pleadings

Felix Anibal Diaz and Cecilia Giron Diaz (collectively, the "Debtors") initiated a voluntary Chapter 7 proceeding on July 6, 2018 (the "Petition Date"). John J. Menchaca was subsequently appointed as Chapter 7 trustee (the "Trustee"). On September 13, 2018, the Court entered an order granting Trustee's application to

**United States Bankruptcy Court
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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

employ the Law Offices of Wesley H. Avery, APC (the "Applicant") as his general bankruptcy counsel, with an effective employment date of August 7, 2019 [Doc. No. 21].

In connection with this First and Final Application, the Applicant seeks an allowance of reduced fees in the amount of \$78,744 and costs in the amount of \$651.85, for a total award of \$79,395.85. Applicant initially sought fees totaling \$83,744 but consented to a \$5,000 reduction. On October 9, 2019, the Debtors filed an untimely objection to the Application on the grounds that certain requested fees exceeded reasonable compensation for actual, necessary services rendered pursuant to § 327 [Note 1]. Specifically, the Debtors object to an itemized list of time entries totaling \$10,822. First, the Debtors highlight that Applicant seeks reimbursement for a "trip to the clerk's office" in the amount of \$468 that should have been performed by a courier or by administrative staff. Second, the Debtors object to a collection of entries dated January 2, 2019 to January 8, 2019 worth \$10,354.50, and which mainly consist of research and drafting services in preparation for a "Motion for Default Judgment." Debtors argue that these fees are excessive and unreasonable because Applicant had already charged nearly 13 hours of fees in preparation for a "request for entry of default" on a "547(b)/548 Complaint" back in August 2018 [Note 2]. Debtors conclude that the fees charged to complete the Motion for Default Judgment are unreasonable in light of Mr. Avery's skill and advanced bankruptcy expertise.

Applicant timely responded to the Opposition on October 15, 2019, highlighting a list of discrepancies and errors contained therein. Applicant primarily requests that the Court strike the Opposition for reasons including, *inter alia*, its untimeliness and the fact that it was seemingly drafted and filed by an attorney other than Glenn Park ("Park"), Debtors' attorney of record, utilizing Park's ECF login. The Applicant also calls the Debtors' credibility into question based on their discharge denial on fraudulent grounds pursuant to §§ 727(a)(2) and (a)(4). Applicant further contends that the compensation sought is for actual and necessary services, which were recorded contemporaneously as they were rendered. While employing a full-time trustee administrator and asset clerk, Applicant claims that legal services, which occasionally include clerical work, are primarily performed by Wesley Avery as a solo practitioner. Finally, Applicant notes that all unsecured creditors will receive 100% of their allowed claims. In sum, Applicant argues all services rendered were within the scope of employment as Trustee's counsel, necessary for this case, and eventually

**United States Bankruptcy Court
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CONT... **Felix Anibal Diaz and Cecilia Giron Diaz**

Chapter 7

reviewed and approved by the U.S. Trustee's office, subject to Applicant's fee reduction.

Relevant Case History

Menchaca v. Olivares (In re Diaz), Adv. No. 2:18-01273 (Bankr. C.D. Cal. 2018)

The Debtors possessed title to real property located at 11119 S. Doty Avenue, Inglewood, California 90303 (the "Property"), which they claimed as their residence as of the Petition Date. On October 12, 2017, a deed of trust was recorded by which Debtors purportedly transferred an interest in the Property worth \$325,000 to their daughter, Johanna Olivares (the "Defendant"), to secure antecedent debt, for no consideration paid. *See* Adv. No. 2:18-01273, Doc. No. 1, Ex. 1. On August 28, 2018, the Applicant commenced the above-captioned adversary proceeding against the Defendant to recover valuable equity in the Property for the estate's benefit. On September 5, 2018, Applicant filed an amended complaint asserting twelve causes of action, consisting of: Avoidance of Transfer; Recovery of Avoided Transfer; Determination of Value, Priority and Extent of Validity of Lien; Declaratory Relief; Quiet Title; To Remove Cloud on Title; and Injunction (the "Amended Complaint"). *See* Adv. No. 2:18-01273, Doc. No. 3. The gravamen of the Amended Complaint was that the transfer was voidable as a fraudulent and preferential transfer. Defendant failed to file a response or opposition by the October 5, 2018 deadline. Upon the Applicant's *Request for Entry of Default Under Local Bankruptcy Rule 7055-1*, the Clerk of the Court subsequently entered Defendant's default on November 8, 2018. *See* Adv. No. 2:18-01273, Doc. Nos. 13, 14.

Following a status conference on December 18, 2018, the Court directed Applicant to file a motion for default judgment. *See* Adv. No. 2:18-01273, Doc. No. 20. The Applicant complied with the Court's orders, preparing the 146-page *Motion for Default Judgment* (the "Default Judgment Motion Against Olivares") on the first seven causes of action asserted in the Amended Complaint, and dismissing the remaining causes of action. On February 15, 2019, the Court entered an order granting in part, denying in part the Default Judgment Against Olivares. According to the Court's tentative ruling, the Trustee was entitled to recover the Property for the estate's benefit pursuant to §§ 544(b), 548(a)(1)(A), 548(a)(1)(B)(i)(I)-(II), 550(a), and 551, but not under 547(b) or 544(a)(3). *See* Adv. No. 2:18-01273, Doc. No. 27. Ultimately, the Court's adjudged that the transfer could be avoided as an actual and constructive fraudulent transfer, and that the Trustee was entitled to recover the

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

avoided deed of trust. *See* Adv. No. 2:18-01273, Doc. No. 29. The adversary proceeding was closed on March 18, 2019.

Menchaca v. Diaz (In re Diaz), Adv. No. 2:18-01274 (Bankr. C.D. Cal. 2018)

On August 28, 2018, the Trustee commenced a second adversary proceeding by filing a complaint against the Debtors. On September 5, 2018, the Trustee filed an amended complaint asserting claims for denial of discharge, accounting and turnover (the "Amended Complaint against Diaz"). *See* Adv. No. 2:18-01274, Doc. No. 2. The claims asserted in the Amended Complaint against Diaz are premised, *inter alia*, on Debtors' fraudulent transfer to Defendant, and allegations that Debtors lied at the initial 341(a) creditors' meeting, did not disclose the Property's transfer in their Statement of Financial Affairs, made materially false representations under penalty of perjury in their schedules, and that they failed to account for rental income derived from the Property's lease. *See id.* Debtors failed to timely file a response or opposition. Upon the Applicant's *Request for Entry of Default Under Local Bankruptcy Rule 7055-1*, the Clerk of the Court subsequently entered Debtors' default on November 7, 2018. *See* Adv. No. 2:18-01274, Doc. No. 14. Pursuant to the Court's order, Applicant filed and prepared the 141-page *Motion for Default Judgment* (the "Default Judgment Motion Against Diaz"), which was partly granted. In granting the Default Judgment Against Diaz, the Court held that Debtors' discharge was denied due to fraudulent conduct pursuant to §§ 727(a)(2)(A), (B), and (a)(4)(A). *See* Adv. No. 2:18-01274, Doc. No. 25. The second adversary proceeding was closed on March 18, 2019.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, that Court finds that it was improper for Debtors' new attorney, Ruben Salazar ("Salazar"), to file the Opposition using Park's ECF account. Regardless of Park's individual circumstances, Salazar should have relied on his own ECF account, or taken the necessary steps to timely procure. Notwithstanding this fact, the Court will consider the substantive arguments raised in the Opposition because there is nothing to suggest that Salazar does not actually represent the Debtors.

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

compensation to award, the Court considers the:

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§ 330(a)(3).

The Debtors' objection against Applicant's requested fees of \$10,354.50 for services connected to the adversary proceedings is **OVERRULED**. While the Court observes that Applicant's requested fees are particularly high for a Chapter 7 proceeding, the Court also recognizes that Applicant was required to expend substantial time and resources litigating the conveyance of the Property from Debtors to their daughter. As discussed above, Applicant's services were paramount to the successful administration of this case as they enabled the Trustee to recover, market, and sell the Property, thereby realizing gross receipts of \$680,000. The Court further observes that the receipts realized were sufficient to pay off both secured and unsecured creditors in full, and ample enough to provide Debtors with a surplus north of \$8,000 [**Note 3**]. The Debtors ascribe much importance to the time entries recorded in connection with the "Motion for Default Judgment," arguing that these requested fees are exorbitant as Applicant had previously prepared a "request for entry of default." The Court finds that Debtors' objection has no merit. Upon revisiting the docket, the Court agrees with Applicant that these two pleadings are distinct and were filed for different reasons at separate stages of litigation. Accordingly, Applicant

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CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

prepared the request for entry of default [Adv. No. 2:18-01273, Doc. No. 13] requesting that the Clerk's office enter default against Defendant under Local Bankruptcy Rule 7055-1(a), while the Default Judgment Motion against Olivares was prepared as ordered by Court [Adv. No. 2:18-01273, Doc. No. 20]. Moreover, Applicant's requested fees are understandable because of the higher rate charged by an accredited bankruptcy specialist such as Mr. Avery, which Debtors concede is "not unreasonable." *See* Opposition at 8. Finally, the Court notes that Applicant voluntarily reduced its fees by \$5,000. In sum, the Court determines that the requested fees described above are reasonable, and therefore, rejects Debtors' invitation to exercise its discretion to appoint a fee examiner under Local Bankruptcy Rule 2016-1(e).

Notwithstanding the abovementioned, the Court finds it appropriate to reduce Applicant's fee of \$468 for a "trip to the clerk's office" by **50% (\$234)** as an amount excessively charged for an administrative task. *See* Application, Ex. 1 at 17. The Court determines that this reduced fee is consistent with the nature of the task, and commensurate with the rates charged by administrative staff performing similar services.

Based on the foregoing, the Court approves fees in the total amount of \$78,510 and expenses in the total amount of \$651.85 for a total award of \$79,161.85.

Applicant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Opposition was filed one day late on October 9, 2019.

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10:00 AM

CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

Note 2: The Court finds that the Debtors make no objection to the fees incurred between August 23, 2018 to October 31, 2018, which they seemingly only reference in context to the challenged January 2019 fees.

Note 3: Unsecured creditors received 100% of allowed claims, payable at an interest rate of 2.34% pursuant to 11 U.S.C. § 726(a)(5) [*see* Doc. No. 87].

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

**United States Bankruptcy Court
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Tuesday, October 22, 2019

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10:00 AM

CONT... Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#5.00 Charges, U.S. Bankruptcy Court

Hearing re [86] and [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/21/2019

See Cal. No. 3, incorporated in full by reference.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz and Cecilia Giron Diaz

Chapter 7

#6.00 APPLICANT: Menchaca & Company, LLP, Accountant

Hearing re [86] and [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/21/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$6,237.50 approved [*See* Doc. No. 83]

Expenses: \$33.70 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Joint Debtor(s):

Cecilia Giron Diaz

Represented By

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Felix Anibal Diaz and Cecilia Giron Diaz

Glenn Park

Chapter 7

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing

RE: [3173] Motion to Extend Time Debtors' Notice of Motion and Fourth Motion for Entry of an Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property *Nunc Pro Tunc*

Docket 3173

Tentative Ruling:

10/21/2019

For the reasons set forth below, the Motion is GRANTED and the Assumption/Rejection Deadline is extended to and including December 24, 2019.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Fourth Motion for Entry of an Order Pursuant to § 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property *Nunc Pro Tunc* [Doc. No. 3173] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3163, 3170, 3171, 3172 and 3173[Doc. No. 3352]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors' business, including office and operational space (the "Leases"). On February 19, 2019, the Court extended the Debtors' deadline to assume or reject these unexpired leases (such deadline, the "Assumption/Rejection Deadline") by 90 days, to and including March 29, 2019. Doc. No. 1579. On May 15,

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2019, the Court further extended the Assumption/Rejection Deadline to and including June 27, 2019. Doc. No. 2383. On August 1, 2019, the Court further extended the Assumption/Rejection Deadline to and including September 25, 2019. Doc. No. 2838. Debtors now move for an extension of the Assumption/Rejection Deadline to and including December 24, 2019. Debtors state that an extension is necessary because Strategic Global Management (“SGM”), the purchaser of the Debtors’ remaining hospitals, has not made a determination regarding the assumption or rejection of the Leases.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(d)(4) provides:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

(B)

(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

"[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made."

Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.), 88 B.R. 231, 237 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989).

In its prior ruling extending the Assumption/Rejection deadline to September 25, 2019, the Court deemed a Lessor’s non-opposition to constitute "consent" for purposes of § 365(d)(4)(B)(ii). *See* Doc. No. 2760-1. The Court finds it appropriate to continue to deem the Lessor’s non-opposition to constitute consent. Because the

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Debtors remain current on lease payments, this approach does not prejudice the Lessors. In addition, absent extension of the deadline, the Debtors will lack the ability to assume and assign any of the leases at issue to SGM. This would require SGM to renegotiate the leases, making it more difficult for SGM to consummate the purchase of the Debtors' remaining hospitals.

The Lessors have received notice of the Motion and have not objected to the relief requested. The Assumption/Rejection Deadline is extended to and including December 24, 2019.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#8.00 HearingRE: [3211] Emergency motion Creditor California Department of Health Care Services's Emergency Motion for the Entry of an Order to Stay the Sale of Medi-Cal Provider Agreements Free and Clear of Interests and the Asset Purchase Agreement that Relate to Buyer SGM's Rights and Obligations under Debtors' Medi-Cal Provider Agreements (Wang, Kenneth)

Docket 3211

Tentative Ruling:

10/21/2019

For the reasons set forth below, the DHCS' motion for a stay pending appeal is DENIED.

Pleadings Filed and Reviewed:

- 1) Creditor California Department of Health Care Services's Emergency Motion for the Entry of an Order to Stay the Sale of Medi-Cal Provider Agreements Free and Clear of Interests and the Asset Purchase Provisions that Relate to Buyer SGM's Rights and Obligations Under Debtors' Medi-Cal Provider Agreements [Doc. No. 3211] (the "Motion")
 - a) Order: (1) Denying DHCS' Application for a Hearing on its Motion for a Stay Pending Appeal on 48 Hours' Notice and (2) Setting Hearing on DHCS' Motion for a Stay Pending Appeal for October 22, 2019, at 10:00 a.m. [Doc. No. 3232]
- 2) Debtors' Opposition to the [Motion] [Doc. No. 3373] (the "Opposition")
 - a) Objection to Declaration of Deputy Attorney General Kenneth K. Wang in Support of the [Motion] [Doc. No. 3375]
- 3) Official Committee of Unsecured Creditors' Opposition to the [Motion] [Doc. No. 3374]
- 4) Creditor California Department of Health Care Services's Reply [in Support of the Motion] [Doc. No. 3399]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California

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("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On September 26, 2019, the Court entered a *Memorandum of Decision Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by the California Department of Health Care Services, Pursuant to §363(f)(5)* [Doc. No. 3146] (the "Memorandum of Decision"). On October 11, 2019, the Court entered an order memorializing the relief granted in the Memorandum of Decision. *See* Doc. No. 3372 (the "Order"). The California Department of Health Care Services (the "DHCS") has appealed the Order, and moves for a stay pending appeal.

A. Summary of the DHCS' Motion for a Stay Pending Appeal of the Order

The DHCS makes the following arguments and representations in support of the Motion:

The DHCS is likely to succeed in its appeal of the Order. The Court's conclusion that the Debtors' Medi-Cal Provider Agreements (the "Provider Agreements") are not executory contracts is mistaken because both parties provided consideration. The DHCS provided consideration because it does not have any pre-existing legal duty to authorizing any health care entity to become a Medi-Cal provider. There is sufficient consideration by the Debtors because the Debtors receive the benefit of being able to receive payments for treating Medi-Cal beneficiaries. In addition, the Debtors provided consideration by agreeing that any purchaser of the Provider Agreements would be subject to successor liability, and that the Debtors would be jointly and severally liable for the purchaser's successor liability. No federal or state statutes or regulations mandate joint and several successor liability by the purchaser.

DHCS will suffer irreparable injury absent a stay, because the Medi-Cal program will be significantly harmed absent a stay. Once the sale closes and funds are distributed to creditors, it will be extremely difficult, if not impossible, for DHCS to recover its claim against the Debtors for unpaid HQA fee obligations and Medi-Cal overpayments. DHCS will also suffer irreparable harm because absent a stay, its appeal will likely become moot.

Other parties will not be harmed by a stay. The only potential impact of a stay is a slight delay in the distribution to creditors. The harm that the potential delay will impose is far outweighed by the significant harm to the Medi-Cal Program that will

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result if a stay is not granted.

A stay promotes the public interest by maintaining the integrity of the Medi-Cal Program.

B. Summary of the Debtors' Opposition to the Motion

The Debtors make the following arguments in Opposition to the Motion [**Note 1**]:

The DHCS has failed to demonstrate a likelihood of success on the merits of its appeal. To make such a showing, the DHCS must demonstrate that the Memorandum of Decision constituted an abuse of the Court's discretion. In attempting to make this showing, the DHCS merely repeats arguments that the Court considered and rejected.

For the first time, the DHCS argues that the joint and several liability provisions in the Provider Agreements and DHCS' decision to "execute" the Provider Agreements constitute non-statutory obligations, providing consideration. DHCS waived this argument by failing to assert it in opposition to the Debtors' motion to sell the Provider Agreements free and clear of DHCS' interests. Therefore, the argument will not succeed on appeal.

There is no merit to DHCS' argument that it will suffer irreparable injury because its appeal will likely become moot absent a stay. In the bankruptcy context, most courts have concluded that the statutory policy of mootness does not demonstrate irreparable injury. Nor is a stay necessary to protect DHCS from being harmed by distributions to creditors through the Debtors' Plan of Liquidation. The Debtors do not intend to confirm a Plan until November or December 2019. Distributions to creditors will not begin for months.

The Debtors, SGM, and the community of patients served by the Debtors' hospitals (the "Hospitals") will suffer substantial injury if a stay is granted. DHCS has requested that the Debtors hold more than \$70 million in trust to cover alleged HQAF and overpayment liabilities. A \$70 million hold-back would create a liquidity crisis that would likely require the Debtors to close three of their Hospitals.

A stay is contrary to the public interest because the public would be harmed if the Debtors were required to close three of their Hospitals. A stay could also cause the sale of the Hospitals to SGM to collapse, to the detriment of the estate.

If the Court grants a stay, it should require DHCS to post a supersedeas bond in the amount of \$915 million.

C. Summary of DHCS' Reply in Support of the Motion

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DHCS makes the following arguments in its Reply in support of the Motion:

The Order involves a matter of significant public importance. The Court should certify a direct appeal of the Order to the Ninth Circuit, pursuant to 28 U.S.C. § 158(d)(2). The issue of the proper characterization of the Provider Agreements will arise in almost all bankruptcy sales of hospitals in the State of California.

The Debtors erroneously claim that DHCS waived the argument that consideration exists because the Provider Agreements required the Debtors to agree to the imposition of successor joint and several liability. In its Supplemental Objection, DHCS stated that the “Debtors’ eligibility to participate in the Medi-Cal program is conditioned upon its consent to the terms of the Agreements.” Doc. No. 3043 at 13. Successor joint and several liability is a term agreed to by the parties in the Provider Agreements.

II. Findings and Conclusions

A. The Motion for a Stay Pending Appeal is Denied

At the outset, the Court addresses the Debtors’ evidentiary objection to the declaration submitted in support of the Motion by Deputy Attorney General Kenneth K. Wang (the “Wang Decl.”). The Wang Decl. states that absent a stay pending appeal, the Medi-Cal program will sustain irreparable injury as a result of DHCS’ inability to recover the Debtors’ alleged HQAF and overpayment liabilities. The Debtors assert that the testimony lacks foundation regarding the declarant’s personal knowledge, and that only an expert can testify regarding the impact of the Order on the Medi-Cal program.

The Debtors’ evidentiary objection is overruled. The DHCS is an agency of the State of California involved in the administration of the Medi-Cal program. As counsel to the DHCS, Mr. Wang is qualified to testify regarding the manner in which the Order might affect the operations of the Medi-Cal program.

Turning to the merits, the DHCS’ application for a stay pending appeal of the Order is denied. Pursuant to Fed. R. Bankr. P. 8007(a)(1), the Court may issue a stay of a judgment, order, or decree pending appeal. In determining whether to grant a stay pending appeal, the Court considers the following four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the

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other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009).

As the Supreme Court has explained, a stay pending appeal

"is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co.*, 272 U.S., at 672, 47 S.Ct. 222. It is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.*, at 672–673, 47 S.Ct. 222; see *Hilton, supra*, at 777, 107 S.Ct. 2113 ("[T]he traditional stay factors contemplate individualized judgments in each case"). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion....

The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be "better than negligible." ... By the same token, simply showing some "possibility of irreparable injury," *Abbassi v. INS*, 143 F.3d 513, 514 (C.A.9 1998), fails to satisfy the second factor.

Id. at 433–35.

To be entitled to a stay pending appeal, the moving party must make a "minimum permissible showing" with respect to each of the four factors. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011). Provided the moving party meets a minimum threshold as to each factor, the Court may "balance the various stay factors once they are established." *Id.* at 965. Under this balancing approach, a stronger showing of irreparable harm can offset a weaker showing of likelihood of success on the merits, and vice versa—provided that the minimum threshold with respect to each factor has been established. *Id.* at 965–66; see also *id.* at 964 ("Petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of hardships tips sharply in petitioner's favor. These standards represent the outer extremes of a continuum, with the relative hardships to the parties providing the critical element in determining at what point on the continuum a stay pending review is justified.").

1. Likelihood of Success on the Merits

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As the Ninth Circuit has explained:

The first showing a stay petitioner must make is "a strong showing that he is likely to succeed on the merits." *Id.* at 1761 (quoting *Hilton*, 481 U.S. at 776, 107 S.Ct. 2113) (quotation marks omitted). There is some uncertainty as to the exact degree of likely success that stay petitioners must show, due principally to the fact that courts routinely use different formulations to describe this element of the stay test. What is clear, however, is that to justify a stay, petitioners need not demonstrate that it is more likely than not that they will win on the merits....

There are many ways to articulate the minimum quantum of likely success necessary to justify a stay—be it a "reasonable probability" or "fair prospect," as *Hollingsworth*, 130 S.Ct. at 710, suggests; "a substantial case on the merits," in *Hilton*'s words, 481 U.S. at 778, 107 S.Ct. 2113; or, as articulated in *Abbassi*, 143 F.3d at 514, that "serious legal questions are raised." We think these formulations are essentially interchangeable, and that none of them demand a showing that success is more likely than not. Regardless of how one expresses the requirement, the idea is that in order to justify a stay, a petitioner must show, at a minimum, that she has a substantial case for relief on the merits.

Leiva-Perez, 640 F.3d at 967–68.

The DHCS has failed to demonstrate that it is likely to succeed on the merits. The Memorandum of Decision sets forth in detail the Court's reasons for finding that the Provider Agreements are executory contracts that may be sold to SGM, free and clear of the interests asserted by the DHCS. In the instant Motion, the DHCS largely reiterates arguments previously considered and rejected by the Court.

The DHCS asserts that the Debtors provided consideration when entering into the Provider Agreements by agreeing that any purchaser of the Provider Agreements would be subject to successor liability, and that the Debtors would be jointly and severally liable for such successor liability. The DHCS contends that no federal or state statute or regulation mandates joint and several successor liability by the purchaser.

The DHCS filed two briefs in opposition to the Debtors' motion to sell the Provider Agreements, and did not raise this argument in either brief. The DHCS waived the argument by failing to timely raise it. *See* LBR 9013-1(f)(2) (providing

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that an opposition to a motion “must be a complete written statements of all reasons in opposition thereto ...”); *see also In re Silberkraus*, 253 B.R. 890, 910 (Bankr. C.D. Cal. 2000), *subsequently aff'd*, 336 F.3d 864 (9th Cir. 2003) (holding that the failure to timely file an opposition constitutes a waiver of the arguments that could have been presented in the opposition). The DHCS’ untimely assertion of this additional argument is not sufficient to show that it is likely to succeed on the merits.

The DHCS claims that it did raise the argument, and points to the following single sentence in its Supplemental Objection: “Debtors’ eligibility to participate in the Medi-Cal program is conditioned upon its consent to the terms of the Agreements.” Doc. No. 3043 at 13. The DHCS’ theory is that the argument was raised because successor joint and several liability is a term in the Provider Agreements.

By including a single sentence referring generally to the Debtors’ eligibility to participate being conditioned upon consenting to the Provider Agreements, the DHCS did not apprise the Court of the argument that consideration was provided through the Debtors’ agreement to joint and several successor liability. On page 14 of the Supplemental Objection, the DHCS listed seven “terms and conditions specified in the Agreements” that, according to the DHCS, “indisputably exemplified” consideration. The successor liability provision was not in the list. A vague and generic reference to the fact that the Debtors consented to all provisions in the Provider Agreements cannot cure this omission. There is no merit to the DHCS’ contention that the argument regarding joint and several successor liability was raised in the Supplemental Objection.

2. Irreparable Injury

The DHCS argues that it will be irreparably injured absent a stay because the closing of the sale, in conjunction with the Court’s finding that SGM is a good-faith purchaser within the meaning of § 363(m), will render an appeal moot. As a result, DHCS argues, it will be unable to obtain appellate review of an important issue affecting the welfare of the people of California.

Outside the bankruptcy context, the Ninth Circuit has held that the certainty that an appeal will become moot is enough to constitute irreparable injury. *See Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir.1986). However, within bankruptcy, a majority of courts have concluded that mootness does not demonstrate irreparable injury. *See, e.g., Ohanian v. Irwin (In re Irwin)*, 338 B.R. 839, 853 (E.D. Cal. 2006) (“It is well settled that an appeal being rendered moot does not itself constitute irreparable harm”); *In re Red Mountain Mach. Co.*, 451 B.R. 897, 908-09 (Bankr. D. Ariz. 2011)

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(internal citations omitted) (“[T]he law is clear in the Ninth Circuit that irreparable injury cannot be shown solely from the possibility that an appeal may be moot”); *In re Convenience USA, Inc.*, 290 B.R. 558, 563 (Bankr. M.D.N.C. 2003) (stating that “a majority of the cases which have considered the issue have found that the risk that an appeal may become moot does not, standing alone, constitute irreparable injury” and citing cases).

The primary objective of § 363(m)’s mootness rule “‘is to protect the interest of a good faith purchaser ... of the property,’ thereby assuring finality of sales.” *In re Onouli-Kona Land Co.*, 846 F.2d 1170, 1172 (9th Cir. 1988) (internal citations omitted). In view of the importance of finality in bankruptcy sales, the Court finds, consistent with the majority of courts, that the risk of mootness does not constitute irreparable injury to DHCS.

Even if mootness were deemed to constitute irreparable injury, the Court notes that a stay pending appeal “‘is not a matter of right, even if irreparable injury might otherwise result.’” *Nken*, 556 U.S. 418 at 433 (internal citation omitted).

The DHCS next argues that the impossibility of recovering alleged payments owed by the Debtors to the Medi-Cal program constitutes irreparable injury. This argument fails, since “economic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award.” *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).

3. Balance of the Hardships

The injury to the Debtors, the estate, SGM, and other stakeholders resulting from issuance of a stay will be substantially greater than the injury to the DHCS from denial of a stay. Peter C. Chadwick, a Managing Director of Berkeley Research Group, LLC (“BRG”), the financial advisors to the Debtors, testifies as follows regarding the impact of a stay:

The stay—and the more than \$70 million hold-back—requested by DHCS would create a liquidity crisis that would have severe economic impact on the Debtors’ cases. By way of illustration, the hold-back of \$70 million, plus the \$5.5 million already recouped by DHCS in the last five weeks, would cause the Debtors to face a liquidity crisis in the first week of December 2019. Among other things, the Debtors would not have sufficient cash on hand to meet payroll obligations and other accrued liabilities, let alone potentially close the SGM Sale or effectuate a plan.

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Currently, the Debtors have sufficient cash on hand to sustain operations and, if necessary, conduct an orderly shut-down of hospital operations and transfer of patients. However, if the Debtors were required to hold-back \$70 million, the Debtors would not have sufficient cash on hand to accomplish the foregoing, and would likely be required to close at least three of the Hospitals.

Chadwick Decl. at ¶¶ 5–6.

By contrast, denial of a stay could result in DHCS being unable to obtain appellate review of the Court's decision. This injury is less severe than the injuries that would be suffered by the Debtors and other stakeholders were a stay issued. In particular, closing of three of the Hospitals would impose serious harm upon a large number of patients who depend upon the Hospitals.

4. Public Interest

The public interest weighs strongly against staying the Order. A stay of the Order will interfere with a timely closing of the SGM Sale and would cause the Debtors to face a liquidity crisis which would likely require them to close three of the Hospitals. Closure of these Hospitals, even if temporary, would severely harm the public interest.

Delay of the SGM Sale harms the administration of the estate, which is also against the public interest. *See Adelson v. Smith (In re Smith)*, 397 B.R. 134, 148 (Bankr. D. Nev. 2008) (holding that there "is a great public interest in the efficient administration of the bankruptcy system").

B. The Court Certifies a Direct Appeal of its Decision to the Ninth Circuit Court of Appeals

Title 28 U.S.C. § 158(d)(2) provides that the Bankruptcy Court, acting on its motion, may certify a direct appeal of an order to the Court of Appeals if the order "involves a matter of public importance" or if an immediate appeal of the order will "materially advance the progress of the case or proceeding." [Note 2]

The issue of whether the Provider Agreements are properly characterized as executory contracts that must be assumed and assigned under § 365 or as licenses that may be sold free and clear under § 363 is a matter of public importance that will likely arise in future bankruptcy cases involving healthcare assets. A direct appeal will materially advance the progress of the case, in view of the importance of the SGM Sale to the Debtor's plan of reorganization.

The Court will certify a direct appeal of the Order to the Ninth Circuit.

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III. Conclusion

The Court will prepare and enter orders (1) denying DHCS' motion for a stay pending appeal and (2) certifying a direct appeal of the Order to the Ninth Circuit.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Official Committee of Unsecured Creditors (the "Committee") also opposes the Motion. The Committee argues that a stay will delay and possibly destroy the SGM Sale. The Committee notes that each day that the SGM Sale is delayed reduces the recovery to unsecured creditors, since the Debtors are losing approximately \$450,000 per day.

Note 2

The DHCS' request for certification of a direct appeal was procedurally improper, because it was presented for the first time in the DHCS' reply, depriving the Debtors of an opportunity to respond. However, the Court may certify a direct appeal on its motion, and the Court has certified a direct appeal of a related order authorizing the Debtors to sell the Hospitals free and clear of conditions asserted by the Attorney General. Under the circumstances, the Court will overlook the procedural irregularity in the DHCS' request.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron

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Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 22, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19; 8-7-19; 9-4-19; 10-8-19

Docket 2579

Tentative Ruling:

10/21/2019

Hearing continued to November 6, 2019 at 10:00 a.m. pursuant to stipulation [Doc. No. 3420].

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 22, 2019

Hearing Room 1568

11:00 AM

2:18-24187 Francisca Revilla Ferri

Chapter 7

#100.00 APPLICANT: Heide Kurtz, Trustee
Hearing re [48] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/21/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$474.59 [*see* Doc. No. 47]

Total Expenses: \$22.44 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Francisca Revilla Ferri

Represented By
Elena Steers

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [112] Motion for Certification to Court of Appeals Notice of Motion and Motion to Certify for Interlocutory Appeal The Denial In Part Of Plaintiffs Motion For Leave To Amend; Declaration Of Thomas J. Eastmond In Support Thereof with proof of service

Docket 112

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton
Mark S Cander

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

JETSTAR Auto Sports, Inc., a

Represented By
Gary M Jackson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

CONT... JW Wireless Inc.

Chapter 7

Shaigan Ben Her, an individual

Represented By
Kelvin J Lo

Lea Young Lee, an individual

Represented By
Gary M Jackson

Joan Yu, an individual

Represented By
Kelvin J Lo

Chu Feng Yu, an individual

Represented By
Kelvin J Lo

Carolyn Rhyoo, an individual

Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond
Robert P Goe

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:19-17051 Marlon Camar Salamat and Daisy Anne Boiser Salamat

Chapter 7

#2.00 Hearing

Docket 0

***** VACATED *** REASON: CALENDARED IN ERROR.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marlon Camar Salamat

Represented By
Michelle A Marchisotto

Joint Debtor(s):

Daisy Anne Boiser Salamat

Represented By
Michelle A Marchisotto

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19

Docket 2157

***** VACATED *** REASON: CONTINUED 11-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 Hearing
RE: [2557] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19; 10-16-19

Docket 2557

Tentative Ruling:

10/22/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Francis Medical Center and Rosa Carcamo Granting Motion for Relief from the Automatic Stay* [Doc. No. 3307] (the "Stipulation") is APPROVED. The Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [2558] Motion for Relief from Stay .

FR 7-15-19; 8-5; 8-14-19; 8-21-19; 9-4-19; 9-25-19; 10-2-19; 10-16-19

Docket 2558

Tentative Ruling:

10/22/2019

No appearances required. The *Stipulation Between Debtors Verity Health System of California, Inc., St. Francis Medical Center and Ivonne Engelman Granting Motion for Relief from the Automatic Stay* [Doc. No. 3308] (the "Stipulation") is APPROVED. The Debtors shall submit an order on the Stipulation within seven days of the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.10 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19

Docket 0

***** VACATED *** REASON: CONTINUED 10-30-19 AT 10:00 A.M.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.20

Hearing

RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19; 10-15-19

Docket 2995

***** VACATED *** REASON: CONTINUED 11-6-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#6.00 HearingRE: [138] Application for Compensation for Steven P Chang, Debtor's Attorney, Period: 7/13/2018 to 9/28/2019, Fee: \$77,262.50, Expenses: \$692.45.

Docket 138

Tentative Ruling:

10/22/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the Court approves the fees and expenses, and payment, as requested by the Applicant, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Fees: \$77,262.50

Expenses: \$692.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By

Christopher J Langley

Steven P Chang

David Samuel Shevitz

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

Adv#: 2:19-01331 Barakat v. Cafa Homes Inc. et al

#7.00 HearingRE: [8] Motion to Amend Motion for Leave to File First Amended Complaint

Docket 8

Tentative Ruling:

10/22/2019

For the reasons set forth below, the motion for leave to file a First Amended Complaint is DENIED. By separate order, the Court will require the Plaintiff to appear and show cause why this action should not be remanded to the Los Angeles Superior Court.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Plaintiff's Motion for Leave to File its First Amended Complaint [Doc. No. 8] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On June 26, 2018, Faoud Barakat (the "Plaintiff") filed a *Complaint for Damages, Fraud, [and] Breach of Contract* in the Los Angeles Superior Court (the "State Court Complaint") against Cafa Homes, Inc. ("Cafa Homes") and Carlos A. Flores. On September 4, 2019, Cafa Homes filed a voluntary Chapter 7 petition. On September 5, 2019, Plaintiff removed the State Court Complaint to the Bankruptcy Court.

The material allegations of the State Court Complaint are as follows:

- 1) Flores is the principal, sole owner, and manager of Cafa Homes. Flores is the alter ego of Cafa Homes.
- 2) In January 2016, Plaintiff loaned Flores and Cafa Homes \$145,000.00 for the purpose of refurbishing real property located in Los Angeles (the "Property"). Flores represented to Plaintiff that the loan would be secured by the Property. Flores presented to Plaintiff a forged Deed of Trust which appeared to have been recorded, when in fact the Deed of Trust had never been recorded. The recording stamps on the Deed of Trust had been

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

CONT...

Cafa Homes Inc.

Chapter 7

forged.

- 3) Flores and Cafa Homes have defaulted on the payments due under the loan.

Based upon the foregoing allegations, the State Court Complaint asserts claims for fraud and breach of contract against Cafa Homes and Flores.

Plaintiff seeks leave to file a First Amended Complaint (the "FAC"). The proposed FAC maintains the allegations of the State Court Complaint, but adds Terra Nova Capital, Inc. ("Terra Nova"), the supervising broker over Flores, as a defendant. The proposed FAC adds claims for relief under § 523(a)(2)(A) and (a)(6) against Cafa Homes. Flores and Terra Nova have not sought bankruptcy protection.

II. Findings and Conclusions

Civil Rule 15(a)(2) provides that subsequent to the filing of an answer, a complaint may be amended "only with the opposing party's written consent or with the court's leave." The Court is required to "freely give leave when justice so requires." Civil Rule 15(a)(2). However, "[l]eave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Here, granting leave to amend would constitute an exercise in futility. The proposed FAC adds claims for relief under § 523(a)(2)(A) and (a)(6) against Cafa Homes. The § 523 causes of action fail to state a claim upon which relief can be granted against Cafa Homes, because Cafa Homes is a business entity that is not eligible to receive a discharge. *See* § 727(a)(1) (providing that the "court shall grant the debtor a discharge, unless the debtor is not an individual"). Because Cafa Homes is ineligible to receive a discharge, the Court cannot grant any meaningful relief on the proposed § 523 causes of action.

The removed State Court Complaint contains only non-core claims arising under non-bankruptcy law. The only claims in the proposed FAC which arise under bankruptcy law fail to state a claim upon which relief can be granted. Pursuant to 28 U.S.C. § 1452, the Court will require Plaintiff to appear and show cause why the State Court Complaint should not be remanded.

The Court will prepare and enter an (1) order denying the motion for leave to file the FAC and an (2) order requiring Plaintiff to appear and show cause why the State Court Complaint should not be remanded.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Defendant(s):

Cafa Homes Inc.

Pro Se

Carlos A. Flores

Pro Se

Plaintiff(s):

Faoud Barakat

Represented By
Shalem Shem-Tov

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

Adv#: 2:19-01331 Barakat v. Cafa Homes Inc. et al

#8.00 Status Hearing
RE: [3] Amended Complaint AMENDED NOTICE OF REMOVAL by Shalem Shem-Tov on behalf of Faoud Barakat against Cafa Homes Inc., Carlos A. Flores. (Attachments: # 1 Notice of Status Conference) (Shem-Tov, Shalem)

FR. 10-15-19

Docket 3

Tentative Ruling:

10/22/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Defendant(s):

Cafa Homes Inc.

Pro Se

Carlos A. Flores

Pro Se

Plaintiff(s):

Faoud Barakat

Represented By
Shalem Shem-Tov

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

2:12-29275 **Monge Property Investments, Inc.**

Chapter 11

#100.00 HearingRE: [832] Application for Compensation First and Final Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees for the Period April 13, 2018 Through September 3, 2019; Declarations of Ruben Monge, Jr. and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service for Roksana D. Moradi-Brovia, Debtor's Attorney, Period: 4/13/2018 to 9/3/2019, Fee: \$83,448.50, Expenses: \$0.00.

Docket 832

Tentative Ruling:

10/22/2019

Having reviewed the first and final application for fees and expenses filed by this Applicant, the Court approves the application and awards the fees and expenses set forth below:

Fees: \$83,440.50 [Doc. No. 832] [**Note 1**]

Expenses: \$0.00 [*see id*]

Note 1: Because Applicant received a post-petition retainer from the Debtor in the sum of \$10,000, the Debtor shall pay the balance of **\$73,440.50** in professional fees. *See* Application at 14.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

CONT... Monge Property Investments, Inc.

Chapter 11

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#101.00 HearingRE: [135] Application for Compensation (with proof of service) for Marcus G Tiggs, Debtor's Attorney, Period: 3/21/2018 to 10/1/2019, Fee: \$39822.50, Expenses: \$988.76.

Docket 135

Tentative Ruling:

10/22/2019

Having reviewed the second and final application for fees and expenses filed by this Applicant, the Court approves the application and awards the fees and expenses set forth below:

Fees: \$39,822.50 approved, which includes \$19,125 in interim fees previously approved [*see* Doc. No. 70] and current fees of \$20,697.50. [**Note 1**]

Expenses: \$988.76 approved, which includes \$414.07 in interim expenses previously approved [*see* Doc. No. 70] and current expenses of \$574.69.

Note 1: The Court notes that Debtor paid a pre-petition retainer of \$20,000, of which \$6,519.50 was earned for pre-petition legal services, leaving an unearned portion of \$13,480.50 as of case commencement. Accordingly, this sum has since been earned and applied to previously-approved interim fees and expenses. *See* Application at 6. The balance of fees and expenses due and owing to Applicant is \$27,330.76. Declaration of Debtor Consenting to Approval of Final Application at ¶ 2.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

CONT... Dwight Gregory Stephens

Chapter 11

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#102.00 HearingRE: [138] Application for Compensation (with proof of service) for Christopher D. Cantore, Special Counsel, Period: 1/7/2019 to 9/24/2019, Fee: \$3850.00, Expenses: \$0.00.

Docket 138

Tentative Ruling:

10/22/2019

Having reviewed the first and final application for fees and expenses filed by this Applicant, the Court approves the application and awards the fees and expenses set forth below:

Fees: \$3,850

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

2:19-16078 David Christopher Brady

Chapter 11

#103.00 Hearing re [44] and [36] and [37] Objection to Debtor's Claim of Exemptions Filed by Creditor Banc of California, National Association

FR. 10-8-19

Docket 0

Tentative Ruling:

10/22/2019

For the reasons set forth below, the Exemption Objection is OVERRULED. With regards to the exemptions claimed under § 703.140(b)(5), the Debtor shall file an amended Schedule C specifying monetary allocations of said exemptions within 30 days of entry of an order incorporating this tentative ruling.

Pleadings Filed and Reviewed

1. Secured Creditor Banc of California, National Association's Objection to Claimed Exemptions [Doc. No. 37] (the "Exemption Objection" or "Objection")
 - a. Notice of Secured Creditor Banc of California, National Association's Objections to Claimed Exemptions [Doc. No. 36]
2. Debtor's Opposition to Banc Of California, National Association's Objection to Claimed Exemptions and Demand for Hearing; Declaration of David Brady [Doc. No. 39] (the "Opposition")
3. Notice of Hearing on Secured Creditor Banc of California, National Association's Objections to Claimed Exemptions [Doc. No. 44]
4. Summary of Assets and Liabilities for Individual (Official Form 106Sum or 206Sum) [Doc. No. 29]
5. As of the date of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

David Christopher Brady (the "Debtor") filed a voluntary chapter 11 petition on May 24, 2019. The Meeting of the Creditors concluded on July 22, 2019.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

CONT... David Christopher Brady

Chapter 11

On August 20, 2019, secured creditor Banc of California, National Association (the "Creditor") timely objected to several of Debtor's claimed objections. The objecting Creditor holds a claim in the amount of \$2,617,169.05 secured by Debtor's interest in real property located at 1511 Summitridge Drive, Beverly Hills, CA 90210 (the "Property"). *See* Doc. No. 29.

In its objection Objection, the Creditor contends that Debtor impermissibly seeks exemptions in property not recognized under state law, and otherwise, seeks exemptions in amounts exceeding the statutory limits. The Court summarizes the Creditor's and Debtor's position below:

- i. Miscellaneous household goods, furnishings, and appliances (the "Household Goods & Furniture")**
 - a. Value: \$9,000
 - b. Amount of Exemption: \$9,000 per § 703.140(b)(3)
 - c. Creditors' Objection: Debtor's Schedule C does not adequately describe the values of each exempt item; amount claimed exceeds statutory cap per § 703.140(b)(3)
- ii. Electronics – misc. consumer electronics (televisions, stereos, cellphones) (the "Electronics")**
 - a. Value: \$3,500
 - b. Amount of Exemption: \$3,500 per § 703.140(b)(3)
 - c. Creditors' Objection: Debtor's Schedule C does not adequately describe the values of each exempt item; amount claimed exceeds statutory cap per § 703.140(b)(3); this property is not exempt under § 703.140(b)(3); Debtor improperly segregates Electronics into its own property category.
 - d. Debtor notes: Electronics can be described as a separate category as contemplated by Official Form 106A/B.
- iii. Sports and hobby equipment – surf board, game table, skis ("Sports and Hobby Equipment")**
 - a. Value: \$1,000
 - b. Amount of Exemption: \$1,000 per § 703.140(b)(3)
 - c. Creditors' Objection: Debtor's Schedule C does not adequately describe the values of each exempt item; amount claimed exceeds statutory cap per § 703.140(b)(3); this property is not exempt under § 703.140(b)(3); Debtor

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 23, 2019

Hearing Room 1568

11:00 AM

CONT... **David Christopher Brady**

Chapter 11

improperly segregates Sports and Hobby Equipment into its own property category.

d. Debtor notes: Sports and Hobby Equipment can be described as a separate category as contemplated by Official Form 106A/B.

iv. **Clothing – Misc. Apparel ("Clothing")**

a. Value: \$5,000

b. Amount of Exemption: \$5,000 per § 703.140(b)(3)

c. Creditors' Objection: Debtor's Schedule C does not adequately describe the values of each exempt item; amount claimed exceeds statutory cap per § 703.140(b)(3);

v. **Comerica Checking Account 0438 (collectively with items vi-xi, the "Bank Accounts and Deposit")**

a. Value: \$2,655.46

b. Amount of Exemption: \$2,655.46 per § 703.140(b)(5)

c. Creditors' Objection: as Debtor has exhausted his homestead exemption per § 703.140(b)(1), the amount claimed exceeds the statutory cap per § 703.140(b)(5).

d. Debtor notes: Creditor wrongly assumes the order that Debtor will choose to apply his "wildcard" exemption under § 703.140(b)(1).

vi. **Comerica Checking Account 0446**

a. Value: \$518.13

b. Amount of Exemption: \$518.13 per § 703.140(b)(5)

c. Creditors' Objection: same as item iv.

d. Debtor notes: same as item iv.

vii. **Comerica Checking Account 9892**

a. Value: \$1,224.17

b. Amount of Exemption: \$1,224.17 per § 703.140(b)(5)

c. Creditors' Objection: same as item iv.

d. Debtor notes: same as item iv.

viii. **Comerica Checking Account 0693**

a. Value: \$325.52

b. Amount of Exemption: \$325.52 per § 703.140(b)(5)

c. Creditors' Objection: same as item iv.

d. Debtor notes: same as item iv.

ix. **Banc of California Account 7833**

a. Value: \$7.76

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- b. Amount of Exemption: \$7.76 per § 703.140(b)(5)
- c. Creditors' Objection: same as item iv.
- d. Debtor notes: same as item iv.
- x. **Rent: security deposit for rental at 10000 Santa Monica Blvd.**
 - a. Value: \$6,000
 - b. Amount of Exemption: \$6,000 per § 703.140(b)(5)
 - c. Creditors' Objection: same as item iv.
 - d. Debtor notes: same as item iv.
- xi. **E-trade Brokerage Account**
 - a. Value: \$6,734.87
 - b. Amount of Exemption: \$6,734.87 per § 703.140(b)(5)
 - c. Creditors' Objection: same as item iv.
 - d. Debtor notes: same as item iv.
- xii. **Interest in Hit Haus Management Inc. (collectively with items xiii and xiv, Debtor's "Business Interests," or each identified by its respective label)**
 - a. Value: Unknown according to Debtor's Schedule A/B [Doc. No. 29]
 - b. Amount of Exemption: Unknown but claimed under § 703.140(b)(5)
 - c. Creditors' Objection: as Debtor has exhausted his homestead exemption per § 703.140(b)(1), the amount claimed exceeds the statutory cap per § 703.140(b)(5).
- xiii. **Interest in Spin Artist Agency Inc.**
 - a. Value: Unknown according to Debtor's Schedule A/B [Doc. No. 29]
 - b. Amount of Exemption: Unknown but claimed under § 703.140(b)(5)
 - c. Creditors' Objection: same as in xi.
- xiv. **Interest in HitHaus Publishing Inc.**
 - a. Value: Unknown according to Debtor's Schedule A/B [Doc. No. 29]
 - b. Amount of Exemption: Unknown but claimed under § 703.140(b)(5)
 - c. Creditors' Objection: same as in xi.

On August 27, 2019, the Debtor filed a timely opposition. First, as a general point of contention, the Debtor argues that the Objection has no legal or factual support and that the arguments made therein are contrary to law or otherwise unintelligible. Debtor claims that the Objection is nothing more than frivolous and harassing motion practice, intended to augment the legal expenses of an over-secured creditor. Debtor cites to case law supporting the inclusion of the Electronics and the Sports and Hobby Equipment as applicable exemptions under §703.140(b)(3). Additionally, the Debtor

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claims that any argument that he ignored statutory limits by improperly "lumping" non-exempt property with claimed exemptions is nonsensical and unsupported by any evidence.

Finally, Debtor states that Creditor wrongly assumes the order in which he intends to apply his wildcard exemption under §703.140(b)(5). Debtor represents that he planned to first apply the wildcard exemption (with the entire unused amount available under § 703.140(b)(1) equaling \$30,825) towards the value of the Bank Accounts and Deposit totaling \$17,976.28. *See* Opposition at 6. The remaining exemption amount of \$12,848.72 would then be applied to available equity, if any, in the Business Interests and the Property, in that order. *See* Opposition at 6. *See id.* Therefore, Debtor asks the Court to deny the Objection in its entirety, and in addition, to preclude any legal fees Creditor may request from this allegedly frivolous Objection.

As of the date of this tentative ruling, no reply is on file.

II. Findings of Fact and Conclusions of Law

A claimed exemption is "presumptively valid." *In re Diener*, 483 B.R. 196, 203 (B.A.P. 9th Cir. 2012) (citing *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)). Once an exemption has been claimed, it is the objecting party's burden to prove by a preponderance of the evidence that the exemption is not properly claimed. *Id.* (citing Fed. R. Bankr. P. 4003(c)); *In re Kelley*, 300 B.R. 11, 17 (B.A.P. 9th Cir. 2003). Initially, this means that the objecting party has the burden of production and the burden of persuasion. *In re Carter*, 182 F.3d at 1029 n.3. The objecting party must produce evidence to rebut the presumptively valid exemption. *Id.* If the objecting party can produce evidence to rebut the exemption, the burden of production then shifts to the debtor to come forward with unequivocal evidence to demonstrate that the exemption is proper. *Id.* The burden of persuasion, however, always remains with the objecting party. *Id.*

As of April 1, 2019, the dollar amounts of exemptions permitted under California Code of Civil Procedure section 703.140(b) are as follows:

<u>CCP § 703.140(b)</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
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- | | | |
|-----|---|-----------------|
| (1) | The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence..... | \$29,275 |
| (2) | The debtor's interest in one or more motor vehicles | \$5,850 |
| (3) | The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor..... | \$725 |
| (4) | The debtor's aggregate interest in jewelry Held primarily for personal, family, or household use of the debtor or a dependent of the debtor..... | \$1,750 |
| (5) | The debtor's aggregate interest, plus Any unused amount of the exemption Provided under paragraph (1), in any Property..... | \$1,550 |

CCP § 703.140(b)(3)

California's "household good exemption" under § 703.140(b)(3) allows debtors to claim an exemption up to the amount of \$725 per item, for an unlimited number of eligible items. *Cf In re Mohring*, 142 B.R. 389, 395 (Bankr. E. D. Cal. 1992) (interpreting § 703.140(b)(3)'s language in the context of a § 522(f) lien avoidance

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motion). The Debtor claimed exemptions under § 703.140(b)(3) in the following property: (i) \$9,000 for Household Goods; (ii) \$3,500 for Electronics; (iii) \$1,000 for Sports and Hobby Equipment; and (iv) \$5,000 for Clothing. At the outset, the Court deems Debtor's claimed exemptions as valid. Creditor posits that Debtor must have exceeded the statutory exemption under § 703.140(b)(3) because the property claimed as exempt is not described with specificity. However, given that Creditor has failed to proffer any evidence demonstrating that any of the claimed items has a value higher than \$725, it follows that Creditor's argument is based on pure conjecture. The Court refuses to entertain the speculative premises asserted by Creditor.

Next, the Creditor argues that the Electronics and the Sports and Hobby Equipment cannot be claimed as exempt pursuant to § 703.140(b)(3). The Court rejects this particular argument as well. California bankruptcy courts construe state exemption statutes liberally to effect their purpose "to sav[e] debtors and their families from want by reason of misfortune or improvidence." *In re Dunnaway*, 466 B.R. 515, 521 (Bankr. E. D. Cal. 2012); *see also In re Turner*, 186 B.R. 108, 115 (9th Cir. B.A.P. 1995). With this policy in mind, courts undertaking inquiries of this kind first look to the statute and then turn to the past decisions of California bankruptcy courts addressing identical or similar questions. *See In re Dunnaway*, 466 B.R. at 521. The Court recognizes that while § 703.140 does not define "household goods," "household furnishings," or "household use," California's general exemption statute provides that household furnishings and appliances are exempt if "ordinarily and reasonably necessary to, and personally used or procured for use by" debtor and debtor's family in their residence. Cal. Civ. Proc. Code § 704.020(a). Further, courts faced with this question have upheld debtors' claims of exemptions in electronics and objects routinely used for entertainment, sport, or other recreational purposes. *See e.g. In re Dunnaway*, 466 B.R. at 526 (granting debtor's exemption in several firearms); *In re Lucas*, 77 B.R. 242, 245 (9th Cir. BAP 1987) (overturning lower court's denial of debtor's exemptions in a camera, exercise bike, and golf clubs.) Here, the Creditor did not provide either any evidence that the Debtor or his family use the disputed property in a manner inconsistent with state law, nor any legal authority to otherwise disallow Debtor's claimed exemptions. Therefore, Creditor has not satisfied its burden of proof as to these objections.

Therefore, the Objection is OVERRULED. The Debtor is entitled to an exemption of \$725 per each item eligible under § 703.140(b)(3).

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CCP § 703.140(b)(5)

Under the "wild card" exemption of § 703.140(b)(5), the Debtor may exempt his interest in goods which are not fully exemptible under other exemption provisions, up to \$1,550, plus any unused amount of the exemption provided under paragraph (1).

Here, the full \$29,275 exemption remains available under § 703.140(b)(1) because Debtor did not claim any property exempt therefrom. Therefore, the Debtor has a valid wild card exemption of **\$30,825**, consisting of the unused exemption of \$29,275 under § 703.140(b)(1), and the amount available under § 703.140(b)(5), which is \$1,550.

The Debtor claimed exemptions under § 703.140(b)(5) as follows: (i) \$17,465.91 in the Bank Accounts and Deposit, and for undetermined amounts in (ii) the Business Interests and (iii) for the Property, to the extent any amount of the exemption remains available. Accordingly, the Court finds that the Debtor may still exempt up to \$13,359.09 in the Business Interests and the Property. However, the Court cannot determine if Debtor claimed property in excess of the remaining wild card exemption because the amounts to be exempted from the Business Interests have not been asserted (*see* Doc. No. 29) with the appropriate level of specificity. The Debtor states that the values of his Business Interests are unknown to him; however, this response ignores the fact that debtors have a duty to inform creditors which property they intend to exempt from the estate. *See Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316–20, n. 6 (9th Cir. 1992) ("[b]ecause the time to object is relatively short, [] it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules.").

The Court lacks the necessary facts to determine whether Debtor has asserted exemptions in excess of his wild card exemption. However, to the extent that Debtor has a valid wild card exemption available, the Objection against exemptions under § 703.140(b)(5) is **OVERRULED** as premature. The Debtor shall specify monetary allocations of exemptions claimed under § 703.140(b)(5) in an amended Schedule C, to be filed no later than 30 days following entry of an order incorporating this tentative ruling.

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III. Conclusion

For the reasons set forth above, the Objection is OVERRULED. The Debtor shall file an amended Schedule C within 30 days of entry of an order incorporating this tentative ruling. The issue regarding legal fees is preserved but not ripe for determination absent a separate motion.

The Creditor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

David Christopher Brady

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-25-19; 6-25-19; 8-26-19

Docket 1

***** VACATED *** REASON: CONTINUED 11-25-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

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CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California Pro Se

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01386 Elissa D. Miller, solely in her capacity as chapte v. Shangha

#2.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01386. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Paul Shangha. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 4-1-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Paul Shangha

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01387 Elissa D. Miller, solely in her capacity as chapte v. OJ Insulation, L.P., a

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01387. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against OJ Insulation, L.P., a Delaware limited partnership. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 7-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

OJ Insulation, L.P., a Delaware

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01388 Elissa D. Miller, solely in her capacity as chapte v. LC Engineering Group,

#4.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01388. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against LC Engineering Group, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

LC Engineering Group, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01389 Elissa D. Miller, solely in her capacity as chapte v. Creative Sound & Vision,

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01389. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Creative Sound & Vision, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Creative Sound & Vision, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
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9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01390 Elissa D. Miller, solely in her capacity as chapte v. Mulligan's Painters, Inc.,

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01390. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mulligan's Painters, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mulligan's Painters, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Premium Energy Solutions, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
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QUIGG LA11, LLC

Jessica Vogel

Chapter 7

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Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01392 Elissa D. Miller, solely in her capacity as chapte v. State Plastering, Inc., a

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01392. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against State Plastering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 7-29-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

State Plastering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01393 Elissa D. Miller, solely in her capacity as chapte v. Sunland Wood Products,

#9.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01393. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Sunland Wood Products, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 10-7-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Sunland Wood Products, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01394 Elissa D. Miller, solely in her capacity as chapte v. Grandmaison

#10.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01394. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Grandmaison Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 3-23-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Grandmaison Construction, Inc., a

Represented By
Mark T Young

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT...

QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01395 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#11.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01395. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

*** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01396 Elissa D. Miller, solely in her capacity as chapte v. Mintz Concrete, Inc., a

#12.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01396. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Mintz Concrete, Inc., a California corporation, Cemex Construction Materials Pacific, LLC, a Delaware limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Mintz Concrete, Inc., a California

Pro Se

Cemex Construction Materials

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT...

QUIGG LA11, LLC

Asa S Hami
Jessica Vogel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01397 Elissa D. Miller, solely in her capacity as chapte v. Allied Roofing and

#13.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01397. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Allied Roofing and Waterproofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Allied Roofing and Waterproofing,

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01398 Elissa D. Miller, solely in her capacity as chapte v. Kalley Flooring, Inc., a

#14.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01398. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Kalley Flooring, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 9/26/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Kalley Flooring, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01399 Elissa D. Miller, solely in her capacity as chapte v. Old World Precast, Inc., a

#15.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01399. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Old World Precast, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: TRIAL CONTINUED 3-23-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Old World Precast, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01400 Elissa D. Miller, solely in her capacity as chapte v. RP Designs, Inc., a

#16.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01400. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against RP Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

RP Designs, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01401 Elissa D. Miller, solely in her capacity as chapte v. Truskett et al

#17.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01401. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Robert L. Truskett, Robert L. Truskett Roofing, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Robert L. Truskett

Pro Se

Robert L. Truskett Roofing, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT...

QUIGG LA11, LLC

Asa S Hami
Jessica Vogel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01402 Elissa D. Miller, solely in her capacity as chapte v. Frank H. Roll-Off

#18.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01402. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Frank H. Roll-Off Service, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Frank H. Roll-Off Service, an

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01404 Elissa D. Miller, solely in her capacity as chapte v. BMC Stock Holdings,

#19.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01404. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against BMC Stock Holdings, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 5-25-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

BMC Stock Holdings, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01405 Elissa D. Miller, solely in her capacity as chapte v. American Express

#20.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01405. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against American Express Company, a New York Corporation, American Express Travel Related Services Company, Inc., a New York Corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 2-24-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

American Express Company, a New

Pro Se

American Express Travel Related

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#21.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01407 Elissa D. Miller, solely in her capacity as chapte v. HD Supply Construction

#22.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01407. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against HD Supply Construction Supply Group, Inc., a Delaware corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 3-23-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

HD Supply Construction Supply

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01408 Elissa D. Miller, solely in her capacity as chapte v. Cook Development

#23.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01408. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Cook Development Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-9-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Cook Development Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01409 Elissa D. Miller, solely in her capacity as chapte v. Hankey Capital, LLC, a

#24.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01409. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Hankey Capital, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONT'D TO 5-25-20 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Hankey Capital, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01410 Elissa D. Miller, solely in her capacity as chapte v. Anchor Loans, LP, a

#25.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01410. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Anchor Loans, LP, a Delaware limited partnership, Anchor Fund, LLC, a California limited liability company. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONT'D TO 5-25-20 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Anchor Loans, LP, a Delaware

Pro Se

Anchor Fund, LLC, a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01411 Elissa D. Miller, solely in her capacity as chapte v. Mumford

#26.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01411. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Scott Mumford. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Post-Petition Transfers, (3) Preservation of Preferential and Post-Petition Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Scott Mumford

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01412 Elissa D. Miller, solely in her capacity as chapte v. Danmar Steel, Inc., a

#27.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01412. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Danmar Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Danmar Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapte v. JSA Engineering, Inc., a

#28.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1639 Calendar**

Monday, October 28, 2019

Hearing Room 1639

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01414 Elissa D. Miller, solely in her capacity as chapte v. B&R Construction, Inc., a

#29.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01414. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against B&R Construction, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 8-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

B&R Construction, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01415 Elissa D. Miller, solely in her capacity as chapte v. Certified Tile, Inc., a

#30.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01415. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Certified Tile, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Certified Tile, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01416 Elissa D. Miller, solely in her capacity as chapte v. J.M.I. Steel, Inc., a

#31.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01416. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against J.M.I. Steel, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 3-20-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

J.M.I. Steel, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01417 Elissa D. Miller, solely in her capacity as chapte v. JC Drywall Designs, Inc.,

#32.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01417. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JC Drywall Designs, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: CONTINUED 3-23-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JC Drywall Designs, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01418 Elissa D. Miller, solely in her capacity as chapte v. JH Plumbing

#33.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01418. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JH Plumbing Corporation, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DISMISSED 7-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JH Plumbing Corporation, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01419 Elissa D. Miller, solely in her capacity as chapte v. Acosta Stone, an

#34.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01419. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Acosta Stone, an unknown business entity. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Acosta Stone, an unknown business

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01420 Elissa D. Miller, solely in her capacity as chapte v. Vista General

#35.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01420. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Vista General Engineering Company, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 5-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Vista General Engineering

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT...

QUIGG LA11, LLC

Jessica Vogel

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-11868 Maria Guadalupe Ortiz Santos

Chapter 7

Adv#: 2:18-01403 Yoo v. Gutierrez

#36.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01403. Complaint by Timothy J. Yoo against Eduardo Infanzon Gutierrez. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfer [11 U.S.C. §§ 542, 544, 550 and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Burstein, Richard)

Docket 1

***** VACATED *** REASON: CONTINUED 5-25-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Guadalupe Ortiz Santos

Represented By
Peter M Lively

Defendant(s):

Eduardo Infanzon Gutierrez

Pro Se

Plaintiff(s):

Timothy J. Yoo

Represented By
Richard Burstein

Trustee(s):

Timothy Yoo (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01425 Cortes v. LeClair

#37.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01425. Complaint by Alvaro Cortes against Jeremy Wyatt LeClair. false pretenses, false representation, actual fraud)),(11 (Recovery of money/property - 542 turnover of property)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Weissman, I)

Docket 1

***** VACATED *** REASON: CONTINUED 1-27-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

Jeremy Wyatt LeClair

Pro Se

Plaintiff(s):

Alvaro Cortes

Represented By
I Donald Weissman

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#38.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

Docket 1

***** VACATED *** REASON: CONTINUED 1-27-20 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By

Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-23852 Du Un Kim

Chapter 7

Adv#: 2:18-01437 LA Financial Credit Union v. Kim et al

#39.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01437. Complaint by LA Financial Credit Union against Du Un Kim. false pretenses, false representation, actual fraud)) (Anaya, Alana)

Docket 1

***** VACATED *** REASON: DISMISSED 3-11-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Du Un Kim Pro Se

Defendant(s):

Du Un Kim Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

LA Financial Credit Union Represented By
Alana B Anaya

Trustee(s):

Brad D Krasnoff (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#40.00 Trial

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 3-12-19

Docket 1

***** VACATED *** REASON: CASE DISMISSED 8-6-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#41.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 4-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01433 Xue v. Verity Health System of California Inc et al

#42.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01433. Complaint by Baoru Xue against Verity Health System of California Inc , St. Francis Medical Center . (12 (Recovery of money/property - 547 preference)) ,(66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: DISMISSED 1-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

Verity Health System of California

Pro Se

St. Francis Medical Center

Pro Se

Plaintiff(s):

Baoru Xue

Represented By

Monica A Blut

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#43.00 Trial Date Set

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 11-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

9:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

10:00 AM

2:19-20782 Jannete Gurrola

Chapter 7

#100.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Toyota Camry .

Docket 11

Tentative Ruling:

10/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

Based on Debtor's schedules, the Court finds that the subject vehicle has a value of \$15,000 and is encumbered by a perfected security interest in favor of the Movant. Considering Movant's lien and estimated costs of sale, there is some, but very little equity and there is no evidence that the trustee can administer the property for the benefit of creditors. Movant is protected by an estimated equity cushion in the property of 8.3%.

The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 28, 2019

Hearing Room 1568

10:00 AM

CONT...

Jannete Gurrola

Chapter 7

1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral). Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the vehicle is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jannete Gurrola

Represented By
Steven B Lever

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

10:00 AM

2:19-20235 Candelaria Arriaga

Chapter 7

#101.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1045 N. Azusa Avenue, Space No. 211, Covina, CA 91722 .

Docket 11

Tentative Ruling:

10/24/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on July 11, 2019. Following trial, an unlawful detainer judgment favorable to the Movant was entered on August 12, 2019.

This Motion has been filed to allow the Movant to proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property. Under California law, debtors' possessory interests are extinguished following entry of an unlawful detainer judgment and a writ of possession. *In re Perl*, 811 F.3d 1120, 1128 (9th Cir. 2016). Movant may proceed with its efforts because a state court determined

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 28, 2019

Hearing Room 1568

10:00 AM

CONT... Candelaria Arriaga Chapter 7

that Debtor does not have the right to possess the premises any longer. *See* Motion for Relief from the Automatic Stay, Ex. 4.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Candelaria Arriaga

Represented By
Juanita V Miller

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 29, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#1.00 Hearing

RE: [66] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Trustees Notice Of Motion And Motion: (1) To Approve Sale Of Real Property Commonly Known As 47 Oak Cliff Drive, Pomona, California Free And Clear Of Liens And Claims, (2) To Authorize Payment Of Real Estate Brokers Commissions, And (3) To Fix Payment On Debtors Homestead Exemption Under 11 U.S.C. § 522(F); Memorandum Of Points And Authorities, Declarations Of Brad D. Krasnoff And Pamela Temple, And Request For Judicial Notice In Support Thereof, With Proof of Service. (Singh, Sonia)

fr. 10-8-19

Docket 66

***** VACATED *** REASON: PER ORDER ENTERED 10-24-19**

Tentative Ruling:

10/28/2019

Hearing VACATED. The Court has approved the stipulation resolving the issues raised by the Internal Revenue Service, see Doc. No. 90, and has entered an order approving the sale, see Doc. No. 92.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Kerry P O'Brien

Joint Debtor(s):

Carol Gonzalez

Represented By
Kerry P O'Brien

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 29, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#2.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

fr. 9-24-18; 1-28-19; 4-1-19, 8-5-19; 10-7-19; 10-8-19

Docket 10

***** VACATED *** REASON: PER ORDER ENTERED 10-28-19**

Tentative Ruling:

10/28/2019

Hearing VACATED. The Court has entered an order denying this motion for relief from the automatic stay (the "Motion") as moot in view of the Court's order approving the sale of the underlying property.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

**#1.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

Docket 1857

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

Latonia Williams

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

Docket 0

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1849

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 2144

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

AppleCare Medical Group St.

Represented By
Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [1881] Cure Objection Asserted by **Medtronic USA, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1881

Tentative Ruling:

10/29/2019

No appearances required. The Court has been advised that the parties have settled the Cure Objection asserted by Medtronic USA, Inc. Stipulation to follow.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Medtronic USA, Inc.

Represented By

David Guess

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1882

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1930

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By
Jeffrey C Krause
Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1949

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By
Mark A Neubauer
John Ryan Yant
Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1965

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1954

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1850

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1940

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1866

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1890

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1873

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

Robert A Rich

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

Docket 1863

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19; 10-23-19

Docket 0

***** VACATED *** REASON: CONTINUED 11-6-19 AT 10:00 A.M.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 4, 2019

Hearing Room 1568

10:00 AM

2:19-20354 Terrence Devon Pratt

Chapter 7

#1.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Porsche Boxster .
(Wilkinson, Reilly)

Docket 10

Tentative Ruling:

10/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 4, 2019

Hearing Room 1568

10:00 AM

CONT... Terrence Devon Pratt Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Terrence Devon Pratt

Represented By
Sanaz S Bereliani

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 4, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#2.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10970 South Avalon Blvd, Los Angeles, CA 90061 .

Docket 21

Tentative Ruling:

10/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (B.A.P. 9th Cir. 1981).

The subject property has a value of \$510,000 and is encumbered by multiple perfected deed of trusts in favor of the Movant. The liens against the property and the expected costs of sale (based upon 8% of the estimated gross sale price) total \$523,398. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 4, 2019

Hearing Room 1568

10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 4, 2019

Hearing Room 1568

10:00 AM

2:19-21003 Arthur Collis

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 130 Monterey Road #107, South Pasadena, CA 91030 . (Jafarnia, Merdaud)

Docket 8

Tentative Ruling:

10/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (B.A.P. 9th Cir. 1981).

The subject property has a fair market value of \$596,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale (based upon 8% of estimated gross sale receipts) total \$643,680. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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Monday, November 4, 2019

Hearing Room 1568

10:00 AM

CONT... Arthur Collis

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Arthur Collis

Represented By
Neil R Hedtke

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 4, 2019

Hearing Room 1568

10:00 AM

2:19-21845 RICHARD ALEXANDER OCHOA

Chapter 7

#4.00 HearingRE: [5] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 5319 Live Oak Street, Cudahy, CA 90201 . (Cruz, Joseph)

Docket 5

Tentative Ruling:

10/30/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on August 20, 2019, with a trial scheduled to take place on November 11, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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CONT... RICHARD ALEXANDER OCHOA

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

RICHARD ALEXANDER OCHOA

Represented By

Lisa F Collins-Williams

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:18-23944 Yean Hee Kim

Chapter 7

#1.00 Hearing
RE: [27] Trustees Motion Seeking Approval Of Compromise Between The
Trustee, Jae Kwon An And Hee Jung Lee

Docket 27

Tentative Ruling:

11/4/2019

For the reasons set forth below, the Motion is GRANTED and the proposed Agreement is APPROVED.

Pleadings Filed and Reviewed

1. Trustee's Motion Seeking Approval of Compromise Between the Trustee, Jae Kwon An and Hee Jung Lee (the "Motion") [Doc. No. 27]
2. Notice of Trustee's Motion Seeking Approval of Compromise Between the Trustee, Jae Kwon An and Hee Jung Lee [Doc. No. 28]
3. Creditor Younkyung Jeong's Opposition to the Trustee's Motion for Approval of Compromise Agreement Between the Trustee, Jae Kwon An and Hee Jung Lee (the "Opposition") [Doc. No. 29]
4. Trustee's Response to Creditor Younkyung Jeong's Opposition to the Trustee's Motion for Approval of Compromise Agreement Between the Trustee, Jae Kwon An and Hee Jung Lee (the "Reply") [Doc. No. 30]
5. Notice of Hearing on Creditor Younkyung Jeong's Opposition to Trustee's Motion Seeking Approval of Compromise Between the Trustee, Jae Kwon An and Hee Jung Lee [Doc. No. 31]
6. Complaint by Younkyung Jeong against Yean Hee Kim, Adversary Proceeding, 2:19-ap-01058 [Adv. No. 1].

I. Facts and Summary of Pleadings

Yean Hee Kim (the "Debtor") voluntarily commenced a chapter 7 petition on

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CONT... Yean Hee Kim

Chapter 7

November 29, 2018. Rosendo Gonzalez is the chapter 7 trustee (the "Trustee"). Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Trustee moves the Court to authorize the compromise of a controversy concerning the transfer of Debtor's alleged interest in real property located at 11568 Springwood Court, Riverside, California 92505 (the "Property"). Motion at 2.

On her commencement documents, the Debtor claimed that she did not possess any ownership interests in real property. Further, at the § 341(a) Meeting of Creditors, she denied transferring any property of value within the last four years. However, the Trustee states that on May 15, 2015, a quitclaim deed was recorded, in which the Debtor purportedly transferred an interest in the Property to Jae Kwon An and Hee Jung Lee (collectively, the "Recipients") for no consideration paid. The Recipients contend that Debtor does not have an ownership interest in the Property but had instead obtained title from the Recipients to refinance the Property using her credit. Although these facts are not thoroughly explained in the Motion, the Court understands that the Debtor returned title to the Recipients upon finalizing the Property's refinance.

The Trustee and the Recipients dispute whether the estate has an interest in the Property. Notwithstanding, the Trustee and the Recipients have reached a settlement (the "Agreement"), subject to the Court's approval, providing for the resolution of all claims relating to the Property in exchange for a lump sum of \$25,000 paid to the estate. Motion at 4. Additionally, the Agreement provides that:

1. The lump sum shall be paid within five business days of a final order approving the settlement.
2. The Recipients agree to waive and shall not assert any claims against the estate, with the condition that they will be entitled to receive any surplus funds, if any, at the conclusion of the bankruptcy case.

Motion at 2 – 3, Ex. 1.

The Trustee requests approval of the Agreement as it satisfies the fairness factors enumerated in *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). Motion at 6 – 7. First, although Debtor's interest in the Property is supported by little or no evidence, the Trustee is cautiously optimistic that the estate

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CONT... Yean Hee Kim

Chapter 7

would prevail in litigation against the Recipients. *Id.* at 7. Second, the Trustee does not anticipate that the collection of the settlement funds will be difficult, and he does not believe that issues concerned are complicated or complex. In sum, the Trustee argues that this Agreement is favorable to the estate as it will immediately generate funds for unsecured creditors. *Id.* at 8.

Summary of Opposition:

The Trustee states that only two claims have been timely filed as of the claims bar date on October 21, 2019. Younkyung Jeong (the "Creditor") asserted one of these claims in the amount of \$90,000. He also initiated an adversary proceeding (*see* 2:19-ap-01058-ER, Adv. No. 1), objecting to the Debtor's discharge under §§ 523(a)(2)(A), 727(a)(2)(A), 727(a)(4)(A) and 727(a)(5). On October 9, 2019, the Creditor filed an opposition to the Motion generally propounding that the Agreement is improper because 1) it was conducted in "secret," without affording him a fair opportunity to negotiate its terms, and 2) the terms of the Agreement do not adequately represent the Creditor's best interests. Indeed, the Creditor's position is at times unclear and vaguely supported by several disjointed arguments. However, the Court understands that Creditor deems the \$25,000 settlement unreasonable as the estate could recapture a larger monetary sum if the Trustee were to recover and liquidate the Property. Confusingly, the Creditor seems to reason that the probable success of his pending adversary proceeding factors against validating the Agreement. Additionally, and without apparent basis, the Creditor appears to suggest that the Agreement should be questioned as the Trustee may have entered into the settlement motivated by self-interest. Opposition at 9 ("Creditor is concerned of the proposed settlement proceeds being primarily used to pay the Trustee's fees rather than make Creditor whole.").

Summary of Trustee's Reply

The Trustee makes several arguments in response to Creditor's Opposition. First, the Trustee emphasizes that he has a fiduciary duty under the Bankruptcy Code to represent the interests of all unsecured creditors, and to that extent, he is required to protect the estate's property and maximize distribution. Reply at 2. Second, although Trustee recognizes that recovering the Property's fair market value would be greatly beneficial to the estate, the Creditor overlooks the lack of evidence substantiating the validity of Debtor's interest in the Property. Namely, the Trustee could not find

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Chapter 7

evidence in Debtor's financial records that any consideration was paid for the Property. The Trustee notes that Creditor has not proffered any concrete evidence either but only makes unsupported assertions. The Trustee further counters that Creditor failed to demonstrate that he abused his judgment by executing the Agreement. Third, the Trustee maintains that in determining whether the Agreement satisfies the "fair and equitable" standard, the Court need "not rule upon disputed facts and questions of law, but rather need only canvass the issues." *Wilmington Trust Co. v. Weinstein (In re Cmty. Bancorp)*, 2013 Bankr. LEXIS 4659 (Bankr. 9th Cir. 2013). Accordingly, the Agreement meets this standard. The Trustee submits that the Opposition should be overruled, and the Motion approved.

II. Findings of Fact and Conclusions of Law

A court may approve a compromise or settlement disposing of an adversary proceeding or claim upon motion of the Trustee and after notice and a hearing. Fed. R. Bankr. P. 9019. "Approval should only be given if the settlement is 'fair and equitable and in the best interest of the estate.'" *Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997) (quoting *Connecticut General Life Ins. Co. v. United Companies Financial Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)). In reaching a determination, courts "must compare the 'terms of the compromise with the likely rewards of litigation.'" *Jackson Brewing Co.*, 624 F.2d 599, 607 (citing *Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 425 (1968)). Furthermore, a court should consider several factors when determining whether a compromise is reasonable, fair and equitable, including:

- (a) the probability of success in litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). A reviewing court, however, need only find that the settlement falls below the lowest point in the range of reasonableness—not that the settlement or compromise offers a

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Chapter 7

debtor the best possible resolution of the action or claim. *See Cosoff v. Robman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied* 464 U.S. 822 (1983).

Applying the *A&C Properties* factors, the Court finds that the Agreement is fair and reasonable as set forth below.

A. Probability of Success in the Litigation

The estate's probability of success in litigation is uncertain. Based on the lack of evidence corroborating Debtor's ownership of the Property, a favorable litigation result is unlikely to follow unless the Trustee conducts time-consuming discovery, possibly entailing depositions, requests for production of documents, and subpoenas. Absent approval of the Agreement, the estate would have to incur these litigation costs, which could be substantial in an adversary proceeding that is likely to be contested by Debtor, the Recipients, and the Creditor. However, the possibility that an adversary proceeding could result in a favorable outcome to the estate should not be dismissed. Nevertheless, any such victory would be meaningless given that the anticipated administrative costs could substantially reduce any potential recovery. In opposition, the Creditor underscores the significance of his own adversary proceeding, however this argument is misplaced because Creditor's success in a dischargeability action is irrelevant with respect to the estate's ownership interest in the Property. In sum, the Court agrees with the Trustee's determination that the probability of success is doubtful in light of his evidentiary findings. The Court determines that this factor weighs in favor of approval of the Agreement.

B. Difficulty of Collection

If the Agreement were to be approved, the Court finds that collecting the settlement proceeds would not be difficult. However, if this issue is litigated, recovering the Property's current value for the benefit of the estate may be jeopardized due to the potential deterioration of the Property. As contemplated above, collecting the Property's monetized value would require the estate to engage in further motion practice, and incur liquidation costs and additional administration expenses. Therefore, this factor favors approval of the Agreement.

C. Complexity, Expenses, Inconvenience, and Delays of Litigation

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CONT... **Yean Hee Kim**

Chapter 7

Given that there is no evidence supporting the Debtor's interest in the Property, and because it is conceivable that litigation could be costly and prolonged, the Court finds that settlement is preferable. In addition, upon further reviewing the record, the Court cannot establish whether there is any equity in the Property, and in light of this uncertainty, a speedy settlement for \$25,000 is not undesirable. This factor weighs in favor of granting the Agreement.

D. Interests of Creditors

The Agreement is in the best interest of unsecured creditors as it guarantees the estate an immediate receipt of \$25,000 [Note 1]. And as discussed above, it is not clear that litigation would result in the Creditor's desired outcome, and even if the estate were to prevail, it would not be without substantial costs. Moreover, aside from the baseless allegations that the Trustee might be acting primarily out of self-interest, Creditor has not articulated any basis to surmise that the Agreement fails to adequately represent his interests. Therefore, this factor supports the approval of the Agreement.

In sum, the Court finds that the proposed Agreement best serves the interests of the estate and the parties. The proposed Agreement provides a quick source of funds to the estate, while minimizing administrative costs and delays, and affording an alternative from prosecuting a potentially prolonged adversary proceeding. For all of the above reasons, the Court does not find that the proposed Agreement falls below the lowest point in the range of reasonableness. *See Cosoff*, 699 F.2d at 608.

Accordingly, the Court GRANTS the Motion and hereby APPROVES the Agreement.

The Trustee shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the

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CONT... Yean Hee Kim

Chapter 7

court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Creditor makes much of the fact that he was not offered a fair opportunity to negotiate a more favorable outcome for creditors. However, Creditor's argument is unpersuasive. Accordingly, there is no evidence that any point Creditor proposed an alternative resolution to improve creditors' best interests. For example, Creditor could have chosen to extend an offer to purchase the estate's avoidance rights in the Property for more than the settled amount. *See, e.g. In re Mickey Thompson Entm't Grp., Inc.*, 292 B.R. 415, 420 – 21 (B.A.P. 9th Cir. 2003) ("[w]hen confronted with a motion to approve a settlement under Rule 9019(a), a bankruptcy court is obliged to consider, as part of the 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale. Whether to impose formal sale procedures is ultimately a matter of discretion that depends upon the dynamics of the particular situation.").

Party Information

Debtor(s):

Yean Hee Kim

Represented By
M Teri Lim

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#2.00 HearingRE: [98] Motion for order confirming chapter 11 plan

Docket 98

Tentative Ruling:

11/4/2019

For the reasons set forth below, the Plan is APPROVED.

Pleadings Filed and Reviewed

1. Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 56] (the "Disclosure Statement")
2. Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 57]
3. Debtor's Notice of Hearing on Adequacy of Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated May 31, 2019 [Doc. No. 58]
4. Objection to Approval of Debtor's Disclosure Statement [Doc. No. 60] (the "Objection")
5. Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and for Plan Treatment on First Lien Secured by Real Property Located at 8429 Rives Ave, Downey, CA 90240 [Doc. No. 66]
6. Order Continuing Hearing on the Adequacy of Debtor's Disclosure Statement [Doc. No. 77]
7. Order Granting Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and for Plan Treatment on First Lien Secured by Real Property Located at 8429 Rives Ave, Downey, CA 90240 [Doc. No. 81]
8. Debtor's Exhibit H, Amended Liquidation Analysis in Support of Debtor's Disclosure Statement Dated May 31, 2019 [Doc. No. 83] (the "Amended Liquidation Analysis")
9. Stipulation By Deutsche Bank National Trust Company, as Trustee for American Home Mortgage Assets Trust 2007-3, Mortgage-Backed Pass-Through Certificates Series 2007-3 and the Debtor re Plan Treatment [Doc. No. 89]
10. Order Approving Stipulation Re: Treatment Of Creditor's Claim Under Debtor's Chapter 11 Plan Of Reorganization [Doc No. 90]
11. Order Approving Disclosure Statement and Setting Hearing on Confirmation of

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Chapter 11

Plan [Doc. No. 94]

12. Proof of Service Re Solicitation Package (1) Individual Debtors Chapter 11 Plan of Reorganization (2) Individual Debtors Disclosure Statement In Support Of Plan Reorganization (3) Order Approving Debtors Disclosure Statement (4) Ballots [Doc. No. 96]
13. Plan Ballot Summary [Doc. No. 99]
14. Motion for Order Confirming Chapter 11 Plan [Doc. No. 98] (the "Confirmation Brief")
15. Monthly Operating Reports for September, August, July, and June 2019 [Doc. Nos. 74, 91, 97, 101]
16. As of the preparation of this tentative ruling, no opposition has been filed.

I. Facts and Summary of Pleadings

Debtor-in-possession, Maria G. Gallarza-Dominguez (the "Debtor"), filed this voluntary Chapter 11 case on June 26, 2018 (the "Petition Date"). The Debtor is employed and generates regular monthly income. The Debtor's primary assets consist of real property located at 8429 Rives Ave, Downey, CA 90240 (the "Rives Property") and 10735 Lesterford Avenue, Downey, CA 90241 (the "Rental Property"). The Debtor collects monthly income from the Rental Property.

The Debtor states that she sought bankruptcy protection after experiencing several years of financial difficulties that arose after her husband lost his high earnings job and as a result of a loss of rental income from the Rental Property. The Debtor and her husband attempted to modify the lien on the Rental Property, but negotiations were unsuccessful, and they ultimately fell behind on the payments. The Debtor and her husband also fell behind on payments for the Rives Property but were able to modify that loan and have been current ever since. The Debtor states that she now has stable rental income and anticipates being able to increase that income in August 2019.

On January 17, 2019, the Court entered an order granting the Debtor's motion to value the Rental Property at \$700,000 for purposes of plan confirmation [Doc. No. 42] (the "Rental Property Valuation Order"). Pursuant to that order, the first-priority lien recorded in favor of Deutsche Bank National Trust Company, as Trustee for U.S. Bank, N.A., serviced by Ocwen Loan Servicing, LLC ("Deutsche Bank" or

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Chapter 11

"Deutsche") was bifurcated into a secured claim of \$700,000 and an unsecured claim of \$495,778.35 and Real Time Solutions' second-priority lien was stripped off in full.

On August 20, 2019, the Court entered an order to approve Debtor's Disclosure Statement, and thereon established deadlines applicable to the solicitation and confirmation of the Plan. Having complied with said deadlines, the Debtor presently seeks confirmation of her Chapter 11 Plan of Reorganization [Doc. No. 57] (the "Plan") A summary of the Plan's material provisions is set forth below.

Summary of the Plan

Administrative Claims

The Debtor anticipates that administrative fees for professionals will be approximately \$30,000 on the Effective Date. The Debtor proposes to pay all administrative claims in full, on the Effective Date, from available cash on hand.

Post-Petition Tax Claim

The Debtor proposes to pay the Los Angeles Property Tax Collector's post-petition real property tax claim of \$10,620.99 in full on the Effective Date.

Class 2(a) – Secured Claim of Forethought Life Insurance Company ("Forethought") – Unimpaired (Deemed to Accept)

Forethought holds a first-priority deed of trust against the Rives Property securing debt in the approximate amount of \$220,576.42. The Debtor proposes to continue making regular monthly mortgage payments as they become due based on the respective loan documents. Accordingly, the Debtor states that this claim will remain unchanged and is unimpaired.

On June 7, 2019, Forethought filed a timely objection to the Debtor's Disclosure Statement asserting that, despite the Debtor's classification of its' claim as unimpaired, certain language in the Plan appeared to apply to its claim in a way that it argued resulted in an impairment. On July 2, 2019, the Debtor filed a *Motion to Approve Stipulation Resolving Objection to Confirmation of Chapter 11 Plan and For Plan Treatment on First Lien Secured By Real Property Located at 8429 Rives Ave, Downey, CA 90240* [Doc. No. 66] (the "Motion re Forethought Treatment"), pursuant to which the Debtor sought approval of a stipulation resolving Forethought's

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Chapter 11

Objection in exchange for the Debtor's agreement to make adequate protection payments and modify the Plan treatment described in the Plan.

On July 24, 2019, the Court entered an order granting the Motion re Forethought Treatment [Doc. No. 81], which provides that Forethought's claim is unimpaired for purposes of plan confirmation and will be deemed to have accepted the Plan pursuant to 11 U.S.C. § 1126(f).

Accordingly, Forethought's claim is unimpaired, was not required to vote, and deemed to accept the Plan.

Class 5(a) – Secured Claim of Deutsche Bank – Accepts the Plan

Deutsche holds a first-priority deed of trust against the Rental Property. Pursuant to the Rental Property Valuation Order, Deutsche holds a secured claim of \$700,000 against the Rental Property. On August 12, 2019, Deutsche filed a *Stipulation Re: Treatment of Creditor's Claim Under Debtor's Chapter 11 Plan of Reorganization* [Doc. No. 89] ("Deutsche's Stipulation"). Pursuant to Deutsche's Stipulation, the Debtor will pay Deutsche's claim in full, plus 5.5% interest, by making monthly installment payments of \$4,099.21 over a thirty-year period. The Court approved Deutsche's Stipulation on August 14, 2019 [Doc. No. 90].

Deutsche's claim is impaired and it voted to accept the Plan.

Class 6(b) – General Unsecured Claims – Accepts the Plan

This class consists of all allowed general unsecured claims, which the Debtor estimate hold aggregate claims in the amount of \$684,385.99. The Debtor proposes to pay this class 3% of their claims, without interest, over a 5-year period by making equal pro-rata monthly installment payments totaling \$342.19.

Class 6(b) is impaired and has voted to accept the Plan.

As of the preparation of this tentative ruling, no opposition has been filed.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The plan is confirmed.

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Chapter 11

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan provides that the Debtor does not have any priority tax claims. In addition, the Plan appropriately classifies administrative expense claims. The Plan satisfies § 1123(a)(1).

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Chapter 11

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that Class 2(a) is unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment afforded to impaired classes, which are Classes 5(a) and 6(b). The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by revenue generated by rental income and pre- and post-confirmation wage earnings of Debtor and her non-debtor spouse. The Debtor anticipates having approximately \$40,671.76 of cash on hand on the Effective Date of the Plan to pay effective date payments of approximately \$40,620.99. *See* Disclosure Statement at 5.

In support, the Debtor submitted the following evidence of her ability to adequately implement the Plan: 1) historical financial statements for the past six months (Disclosure Statement, Exhibit A2), 2) Debtor's post-petition income and expenses for May 2019 (Disclosure Statement, Exhibit A1), and 3) monthly financial projections through December 2019 (Disclosure Statement, Exhibit A1). Total

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monthly payments under the plan equal \$4,441.4 and as Debtor's financial projections demonstrate, she will have an average monthly cash flow of \$4,442.15. *See* Disclosure Statement, Ex. A1. Accordingly, Debtor will have a net monthly income of less than one dollar. However, to the extent that Debtor's plan is mathematically possible, the proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) which imposes certain requirements upon corporate debtors, does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) which imposes certain requirements upon corporate debtors, does not apply.

10. Section 1123(a)(8)

Section 1123(a)(8) requires that individual debtors must provide post-petition earnings and other future income as needed to execute the Plan.

The Plan provides that Debtor will apply her future income to fund the Plan as necessary. The Plan satisfies § 1123(a)(8).

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Plan Proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan" [Doc. No. 94]);
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Motion in Individual Ch. 11 Case for Order Employing Professional" [Doc. No. 32]); and
- 3) Filed monthly operating reports.

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

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Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Plan Proponent has complied with the requirements of the Code throughout this case. Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith because no party has objected to confirmation. Section 1129(a)(3) is satisfied.

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides that payment of all professional fees is subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) which imposes certain requirements upon corporate debtors, does not apply.

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in

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relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 2(a) is unimpaired and deemed to have accepted the Plan. Class 5(a) is impaired but voted to accept the Plan. *See* Plan Ballot Summary [Doc. No. 99]. Each claimant in Class 6(b), composed of general unsecured creditors, will receive 3% under the Plan, which is an improved distribution compared to the 0% payout anticipated in chapter 7 liquidation. Class 6(b) voted in favor of the Plan [**Note 1**]. The Plan satisfies the best interests of creditors test under § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

Classes 2(a) is unimpaired and deemed to have accepted the Plan. Classes 5(a) and 6(b) are impaired and have accepted the Plan. *See* Plan Ballot Summary [Doc. No. 99]. Section 1129(a)(8) is satisfied because all classes have either affirmatively accepted the Plan or are deemed to accept the Plan.

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all outstanding allowed administrative claims in full as soon as the fees are approved by the Court and none of the professionals have requested a different payment arrangement. In addition, the Debtor represents that no priority tax claims were asserted. The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of

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the plan by any insider."

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Classes 5(a) and 6(b) are impaired and have accepted the Plan. Section 1129(a) (10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." In the Ninth Circuit, courts have construed "feasibility" as a "reasonable probability of success," thereby rejecting the notion that successful reorganization must be shown to be certain. *See In re North Valley Mall, LLC*, 432 B.R. 825, 838 (Bankr. C.D. Cal. 2010) (citing *In re Acequia, Inc.*, 7887 F.2d 1352, 1364 – 65 (9th Cir. 1986)). The issue of feasibility is factual and may be satisfied by a "relatively low threshold of proof"—as long as a reorganizing debtor can demonstrate the ability to achieve the terms proposed in a plan, "the *possibility* of failure is not fatal." *See id.* (emphasis in original).

The Court previously advised Debtor to address her ability to implement the Plan in future briefing [*see* Doc. No. 93]. The Debtor's budget projections reflect that she will have a monthly income of \$4,442.15 with which she is required to make monthly payments of \$4,441.40 under the Plan, leaving her with a net monthly income of just \$0.75. The Confirmation Brief fails to adequately explain the Debtor's ability to implement the Plan, merely offering conclusory assurances that Debtor will be able to effect payments as indicated by financial projections in the Disclosure Statement. Notwithstanding Debtor's unsatisfying explanation, the Court independently finds that the Plan has a reasonable possibility of success. Based upon its review of the Debtor's financial statements and budget projections, the Court finds that the Plan is mathematically possible, and not likely to be followed by liquidation or further financial reorganization. In addition, the Court observes that the most recent monthly operating report indicates a substantial increase in Debtor's rental account deposits—and in fact, said deposits more than doubled for the month of September 2019. *Compare* Doc. No. 101 at 5 *with* Doc. No. 74 at 4. For the reasons stated above, the Court finds that the Plan is consistent with the feasibility standard and complies with § 1129(a)(11).

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SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Debtor's knowledge, UST fees are current. To the extent any fees are outstanding, the Plan provides that all such fees are nominal and will be paid by the Effective Date. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the Plan. Section 1129(a)(15) does not apply because no objections to the Plan are on file.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

The Court finds that the relevant provisions of § 1129(b) are inapplicable because all classes have voted in favor of the Plan.

SECTION 1129(c)

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Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

To the Court's knowledge, no governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

Post-Confirmation Status Conference

A Post-Confirmation Status Conference shall be held on **February 12, 2020, at 10:00 a.m.** A Post-Confirmation Status Report shall be filed by no later than fourteen days prior to the hearing.

III. Conclusion

For the reasons set forth above, the Plan is CONFIRMED.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: In regard to Class 6(b), only Deutsche Bank timely submitted a ballot, in favor of the Plan. The Debtor did not receive any other ballots from claimants in Class

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6(b). Given that all unsecured creditors were adequately served with the solicitation package [*see* Doc. No. 96], the Court determines that Class 6(b) has accepted the Plan based on the lone vote in favor submitted by Deutsche Bank. *Cf. Collier on Bankruptcy* ¶ 1126.04 (16th rev'd ed.) (providing that only voting creditors are considered in determining whether the requisite majorities and claim amounts have accepted a plan.).

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

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2:19-20245 GreenCure Holding, LLC

Chapter 11

#3.00 HearingRE: [33] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 33

Tentative Ruling:

11/4/2019

For the reasons set forth below, the Motion is GRANTED, and this case is DISMISSED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 33] (the "Motion")
2. Notice of Motion [Doc. No. 35]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor Greencure Holding, LLC (the "Debtor") filed this voluntary Chapter 11 case on August 29, 2019 (the "Petition Date"). The Office of the United States Trustee (the "UST") seeks an order dismissing this case based upon the Debtor's failure to:

1. Provide Notice of Setting/Increasing Insider Compensation;
2. File an application to employ counsel;
3. File a declaration regarding compliance with the U.S. Trustee Guidelines and Requirements for Chapter 11 Debtors In Possession ("Chapter 11 Compliance declaration");
4. Submit a real property questionnaire;
5. Provide sufficient evidence of the Debtor's closing of all pre-petition bank accounts,

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- including closing bank statements;
6. Provide bank account information in the Chapter 11 Compliance declaration;
 7. Provide sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts, including furnishing checks for each account.
 8. Provide sufficient evidence of current insurance coverage;
 9. Provide proof of required certificates and applicable licenses in Chapter 11 Compliance declaration;
 10. Provide a list of insiders;
 11. Provide financial statement information in Chapter 11 Compliance declaration;
 12. File a projected cash flow statement for the first ninety (90) days of operation under chapter 11;
 13. File a statement of major issues and timetable report;
 14. Provide copies of the preceding two years of state and federal income tax returns;
 15. Provide an Employee Benefit Plan Questionnaire;
 16. File monthly operating reports ("MORs") for August and September 2019 **[Note 1]**; and
 17. Pay quarterly fees for the 3rd quarter of 2019 (4th quarter fees will be accruing by hearing date).

See Motion, Declaration of Maria A. Ramos.

The UST further contends that this petition was filed in bad faith for the purpose to stay a pending foreclosure sale. Debtor's only asset is a second-priority trust deed with a face value of \$700,000 (the "Second Trust Deed") encumbering real in property in San Gabriel. Based on a review of Debtor's commencement documents, the Trustee contends that dismissal is consistent with the best interest of creditors as there are no assets to administer and nothing to reorganize. The UST asks for the dismissal of this case with a 180-day refiling bar, provided that the Court finds good cause. *See Motion at 5, ¶ 3.*

As of the preparation of this tentative ruling, the Debtor has not opposed the Motion. However, on September 15, 2019, the Debtor submitted a declaration of

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"Summary and Explanations Re Trustee 7 Day Items," therein attesting to only possessing the asset described above and explaining that the bankruptcy case was filed to resolve a scheme to defraud Debtor's manager. Motion, Ex. A. Accordingly, the Debtor claims that a third party obtained title and subsequently incurred two loans secured by the property at issue. *Id.* Debtor acquired one of these loans—secured by the Second Trust Deed—while the other loan with senior priority (the "Senior Loan") is near foreclosure. *Id.* Debtor initiated this petition to stay foreclosure and raise funds to acquire the Senior Loan [Note 2]. *Id.* The Debtor's position appears to be that many of the Chapter 11 requirements delineated above are inapplicable to it in light of the foregoing facts. *See id.*

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(M) inability to effectuate substantial consummation of a confirmed plan." 11 U.S.C. § 1112(b)(4)(F), (H), & (M). "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

For the reasons set forth in the Motion and Declaration of Maria A. Ramos, the Court finds that the UST has established "cause" to convert, dismiss or appoint a chapter 11 trustee in this case based on the Debtor's unexcused failure to comply with timely reporting requirements, to timely provide information to the UST, and to pay the UST's quarterly fees.

Additionally, despite the Debtor's representations surrounding the commencement of this petition, the Court finds that the Debtor has not adequately demonstrated an interest and ability to pursue Chapter 11 reorganization based on the lack of meaningful progress in this case. Furthermore, the Court deems the Debtor's failure to

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file a response or opposition to the Motion as consent to the granting of the Motion pursuant to Local Bankruptcy Rule 9013-1(h). Notwithstanding, based on the record presented, the Court cannot determine that Debtor initiated this case with the intention to "unreasonably deter and harass creditors." See *In re Sullivan*, 522 B.R. 604, 615 – 16 (finding that bankruptcy courts "should examine [debtors'] financial status and motives" in determining whether a debtor acted in bad faith). Moreover, no evidence of past bankruptcy filings was proffered in the moving papers.

Having determined that cause exists, the Court must next determine whether conversion, dismissal or appointment of a Chapter 11 trustee serves the best interests of creditors or the estate. See *In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)). Based on the Court's review of relevant pleadings and the Debtor's schedules, the Court finds that that there does not appear to be any unencumbered assets that a Chapter 7 trustee could administer for the benefit of creditors. Therefore, the Court finds that dismissal appears to be in the best interest of creditors. Furthermore, the Court does not find that an 180-day refiling bar is appropriate at this time as it cannot determine that Debtor acted in bad faith on the facts presented.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED, and this case is DISMISSED.

The UST is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the

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court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As of the preparation of this tentative ruling, no MORs have been submitted.

Note 2: Debtor claims that Debtor's manager is currently negotiating funding to acquire the Senior Loan; the transaction is expected to close within the next two or three months. *See* Motion, Ex. A, ¶ 3.

Party Information

Debtor(s):

GreenCure Holding, LLC

Represented By
James Mortensen

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2:19-20836 Michael Bonert and Vivien Bonert

Chapter 11

#4.00 Hearing
RE: [13] Application to Employ Fredman Lieberman Pearl LLP as General
Bankruptcy and Reorganization Counsel

Docket 13

***** VACATED *** REASON: CONTINUED 11-19-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

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2:17-14364 Silla Automotive, LLC

Chapter 7

#100.00 Hearing
RE: [197] Application for Compensation re Berkeley Research Group LLC

Docket 195

Tentative Ruling:

11/4/2019

For the reasons set forth herein, the hearing on the third interim application (the "Application") by Berkeley Research Group, LLC ("Trustee's Accountant") is CONTINUED to **December 3, 2019 at 10:00 a.m.** This tentative ruling is applicable only to the matter calendared as item no. 100.

Pleadings Filed and Reviewed:

1. *Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses by Professionals* [Doc. No. 197]

For the reasons set forth herein, the hearing on the third interim application (the "Application") by Berkeley Research Group, LLC ("Trustee's Accountant") is CONTINUED to **December 3, 2019 at 10:00 a.m.** This tentative ruling is applicable only to the matter calendared as item no. 100.

Pursuant to Local Bankruptcy Rule 2016-1(a)(2)(C), professionals must serve, in addition to the notice for interim fee applications, "a copy of the application, together with all supporting documents, on the debtor or debtor in possession, the trustee (if any), any committee appointed in the case, counsel for any of the foregoing, and the United States trustee." On October 10, 2019, Trustee's counsel provided notice of a hearing for the third interim fee applications, which included reference to requested fees by Trustee's Accountant totaling \$5,362.19 [Doc. No. 197]. However, Trustee's Accountant failed to both file and provide proof of service of the Application.

Trustee's Accountant shall file and serve the Application as provided by local

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CONT... Silla Automotive, LLC

Chapter 7

bankruptcy rules no later than **November 12, 2019**. Failure to submit the Application as required herein may result in the hearing date being taken off calendar or continued again.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

Trustee(s):

Richard K Diamond (TR)

Represented By
Howard Kollitz
Zev Shechtman
Sonia Singh

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2:17-14364 Silla Automotive, LLC

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#101.00 HearingRE: [195] Application for Compensation Third Interim Application for Compensation by Danning, Gill, Diamond & Kollitz, LLP, as General Counsel to Chapter 7 Trustee; Declarations of Zev Shechtman and Richard K. Diamond, as Trustee in Support Thereof, With Proof of Service for Danning Gill Diamond & Kollitz, LLP, General Counsel, Period: 10/1/2018 to 9/30/2019, Fee: \$24,402.50, Expenses: \$1,327.48. (Shechtman, Zev)

Docket 195

Tentative Ruling:

11/4/2019

Having reviewed the third interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below (interim applications and awards are now deemed final):

Fees: \$24,402.50

Expenses: \$1,327.48

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

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Trustee(s):

Richard K Diamond (TR)

Represented By
Howard Kollitz
Zev Shechtman
Sonia Singh

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2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

#102.00 Hearing
RE: [43] Motion to set aside RE: Entry of defaults against Janet Estrada and Steven Molina

Docket 43

***** VACATED *** REASON: CONTINUED 1-7-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon - SUSPENDED -

Defendant(s):

Janet Estrada

Represented By
Todd L Turoci

Steven Molina

Represented By
Todd L Turoci

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Michael G D'Alba

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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Chapter 7

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

#103.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01128. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Janet Estrada, Steven Molina. (Charge To Estate). -Complaint to Avoid Voidable Transactions and for Turnover Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (D'Alba, Michael)

fr. 7-16-19; 10-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 1-7-2020 AT 11:00 A.M.**

Tentative Ruling:

7/15/2019

Default was entered against both Defendants on June 19, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **August 16, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, November 5, 2019

Hearing Room 1568

11:00 AM

CONT... Manuel Macias

Chapter 7

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manuel Macias

Represented By

Jennifer Ann Aragon - SUSPENDED -

Defendant(s):

Janet Estrada

Pro Se

Steven Molina

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

Michael G D'Alba

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Eric P Israel

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-20013 David Russell Clough

Chapter 7

#1.00 APPLICANT: HEIDE KURTZ, TRUSTEE

Hearing re [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/5/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$2,850 [*see* Doc. No. 63]

Total Expenses: \$36.58 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

Trustee(s):

Heide Kurtz (TR)

Represented By

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CONT...

David Russell Clough

Robert A Hessling

Chapter 7

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#2.00 APPLICANT: Attorney for Trustee: - ROBERT HESSLING

Hearing re [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/5/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$12,000 [*see* Doc. No. 62] [**Note 1**]

Expenses: \$330.71 [*see id.*]

Note 1: Applicant voluntarily reduced its requested fees from \$12,877 to \$12,000 [*see id.*].

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

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CONT... David Russell Clough

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Robert A Hessling

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Hearing Room 1568

10:00 AM

2:19-16669 Parkridge Private School, Inc.

Chapter 7

#3.00 Show Cause Hearing
RE: [25] Notice to creditors (BNC-PDF) re 24 Order Requiring Plaintiffs To Appear And Show Cause Why The Court Should Not (1) Lift The Automatic Stay To Permit The State Court Action To Proceed And (2) Abstain From Hearing The Complaint.m., (Lomeli, Lydia R.)

Docket 25

*** VACATED *** REASON: PER ORDER ENTERED 11-4-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-16669 Parkridge Private School, Inc.

Chapter 7

Adv#: 2:19-01213 Santos et al v. Parkridge Private School, Inc.

#4.00 Plaintiffs To Appear And Show Cause Why The Court Should Not (1) Lift The Automatic Stay To Permit The State Court Action To Proceed And (2) Abstain From Hearing The Complaint
RE: [1] Adversary case 2:19-ap-01213. Complaint by Efrain Santos, Evelyn Lambert against Parkridge Private School, Inc.. Eric)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Defendant(s):

Parkridge Private School, Inc.

Pro Se

Plaintiff(s):

Efrain Santos

Represented By
Eric C Morris

Evelyn Lambert

Represented By
Eric C Morris

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 6, 2019

Hearing Room 1568

10:00 AM

2:19-16669 Parkridge Private School, Inc.

Chapter 7

Adv#: 2:19-01213 Santos et al v. Parkridge Private School, Inc.

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01213. Complaint by Efrain Santos, Evelyn Lambert against Parkridge Private School, Inc.. Eric)

FR. 10-15-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parkridge Private School, Inc.

Represented By
Robert M Aronson

Defendant(s):

Parkridge Private School, Inc.

Pro Se

Plaintiff(s):

Efrain Santos

Represented By
Eric C Morris

Evelyn Lambert

Represented By
Eric C Morris

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, November 6, 2019

Hearing Room 1568

10:00 AM

2:19-18234 Russell Gando Osio

Chapter 7

#6.00 HearingRE: [15] Motion for Turnover of Property Chapter 7 Trustee's Notice of Motion and Motion for Orders: (1) Sustaining Objection to Debtor's Claimed Homestead Exemption; and (2) Compelling Turnover of Estate Property and Documents with Proof of Service (Chung, Toan)

Docket 15

Tentative Ruling:

11/5/2019

For the reasons stated below, the Trustee's objection to the Debtor's homestead exemption is SUSTAINED, and the claimed exemption is disallowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Orders: 1) Sustaining Objection to Debtor's Claimed Homestead Exemption; and 2) Compelling Turnover of Estate Property and Documents ("Motion") [Doc. No. 15]
- 2) Other relevant papers:
 - a) Chapter 7 Voluntary Petition [Doc. No. 1]
 - b) Amended Schedule C [Doc. No. 11]
- 3) As of the preparation of this tentative ruling, no opposition has been filed.

I. Facts and Summary of Pleadings

Russell Gando Osio ("Debtor") commenced a voluntary Chapter 7 petition on July 16, 2019 (the "Petition Date"). Sam S. Leslie was appointed as Chapter 7 Trustee (the "Trustee"). As provided in Debtor's amended Schedule C, the Debtor claimed a homestead exemption of \$47,491.50 in real property located at 11441 Kelowna St., Sylmar, CA 91342 (the "Property") [see Doc. No. 11]. Debtor claimed the homestead exemption under California Code of Civil Procedure ("CCP") §704.730. Debtor's *Schedule A/B: Property* further states that the value of the Property owned by Debtor is \$334,124.50, and that the value of the entire Property is \$668,249—indicating that Debtor holds a 50% interest in the Property. Debtor also represents that he owns an

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CONT... **Russell Gando Osio**

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equitable interest in the Property, which is community property.

Debtor's commencement documents indicate that Debtor does not reside at the Property, but at a different address—9013 Woodale Ave., Pacoima, CA 91331 (the "Woodale Address"). *See* Official Form 101, Item No. 5 [Doc. No. 1]. According to his *Statement of Financial Affairs*, Debtor has not lived anywhere other than at the Woodale Address in the past three years. *See* Official Form 107, Item No. 2 [Doc. No. 1]. Reference to a rental agreement dated August 20, 2018 instead provides that Debtor is leasing the Property to a "Reynaldo Osio (Hernaez Residential Care Facility)" through August 20, 2023. Motion, Ex. 5.

On October 16, 2019, the Trustee filed an objection to the claimed exemption on the grounds that the Debtor does not live at the Property. Based on a liquidation assessment, the Trustee estimates that there is net equity in the Property totaling \$41,523.08 [Note 1]. As part of his efforts to recover this equity, the Trustee contacted Debtor's attorney to obtain Debtor's permission to undertake an interior inspection of the Property, without success. Declaration of Sam S. Leslie ("Leslie Decl.") at ¶ 12. Similarly, Debtor did not respond to voicemail messages left by Trustee's realtor. *Id.* at ¶13. The Trustee presently seeks to fully disallow Debtor's homestead exemption in the Property, and to compel him to turn over the Property's keys, current mortgage statement, and proof of insurance no later than seven (7) days after entry of an order granting this Motion. Motion at 7. If Debtor fails to timely comply, the Trustee requests that the Court authorize the U.S. Marshal's office to make a forced entry into the Property. *Id.*

As of the preparation of this tentative ruling, no opposition has been filed.

II. Findings and Conclusions

Pursuant to 11 U.S.C. § 541(a)(1), the commencement of a bankruptcy petition creates an estate comprising of all of legal and equitable interests of a debtor, except as provided in subsections (b) or (c)(2) of this section. Furthermore, under §§ 521 and 542, a debtor is obligated to identify all property of the estate and to turn over the same to the Trustee, unless the property is of inconsequential value or exempt under § 522. Section 542(a) provides that an entity in possession of estate property "shall" deliver such property to the trustee. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th

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CONT... **Russell Gando Osio**

Chapter 7

Cir. 1996). This is a mandatory duty arising at the time a bankruptcy petition is filed.
Id.

Under California law, the filing of a bankruptcy petition constitutes a "forced sale" which triggers the protections afforded by the automatic homestead exemption provided for in CCP §704.730. *See Weil v. Elliott (In re Elliott)*, 523 B.R. 188, 195 (B.A.P. 9th Cir. 2014) (“[t]he filing of a bankruptcy petition constitutes such a ‘forced sale’ to trigger the application of the automatic homestead exemption.”). Cal. CCP § 704.710(c) defines a homestead as “the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor’s spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.” In the bankruptcy context, the date on which the judgment creditor’s lien attached to the dwelling is the date of the filing of the petition. *See In re Dodge*, 138 B.R. 602, 606 (Bankr. E.D. Cal. 1992) (stating that in the context of a bankruptcy proceeding, “the filing of the petition is tantamount to a levy on the debtor’s property”).

The gravamen of the Trustee’s objection is that the Property belongs to the bankruptcy estate under § 541(a)(1) as the Debtor improperly claimed it exempt under CCP § 704.730. Accordingly, because the Debtor has not resided in the Property within the last three years, he may not claim it as part of his homestead exemption. In support, the Trustee refers to the information Debtor proffered in his commencement documents—*Official Form 101* and *Official Form 107*—providing that Debtor exclusively resided at the Woodale Address in the three years preceding the bankruptcy filing. Moreover, the Court notes the inclusion of a rental agreement purportedly entered by Debtor and Reynaldo Osio, which indicates that the Property has been leased to a third party since August of 2018. Debtor has not disputed any of these assertions. Based on the foregoing, the Court concludes that Debtor is not entitled to a homestead exemption in the Property because he did not live there when the petition was filed. Moreover, the Court deems the Debtor’s failure to file a response or opposition as consent to granting the Motion pursuant to Local Bankruptcy Rule 9013-1(h).

For the reasons set forth above, the Trustee’s objection to the claimed homestead exemption is SUSTAINED, and Debtor’s exemption is DISALLOWED in its entirety.

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CONT... Russell Gando Osio

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Furthermore, because the Property is valuable to the estate, the Debtor has the duty to turn it over to the Trustee pursuant to § 542(a). Accordingly, the Debtor is ordered to turn over the Property and requested documents to the Trustee no later than seven (7) days after entry of an order incorporating this tentative ruling.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Trustee calculated available net equity of \$41,523.08 by subtracting estimated liquidation costs of \$53,459.92 and the senior lien amount of \$573,266 (*see* Exhibit 6) from the Property's fair market value of \$668,249 (*see* Exhibit 1). *See* Leslie Decl. at ¶ 10.

Party Information

Debtor(s):

Russell Gando Osio

Represented By
Christopher S Reyes

Trustee(s):

Sam S Leslie (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 1568

10:00 AM

2:13-12806 Lenore Pride

Chapter 11

Adv#: 2:19-01288 Pride v. JP MORGAN CHASE BANK et al

#7.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding (Balser, Justin)

Docket 9

***** VACATED *** REASON: DISMISSED 11-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lenore Pride

Represented By
Joon M Khang

Defendant(s):

JP MORGAN CHASE BANK

Represented By
Justin D Balser

Quality Loan Service Corp.

Pro Se

DOES 1-10, Inclusive

Pro Se

Plaintiff(s):

Lenore Pride

Represented By
Joon M Khang

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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 HearingRE: [3240] Motion Debtors' Notice of Motion and Motion for Entry of an Order Amending Key Employee Incentive Plan; Memorandum of Points and Authorities In Support Thereof; Declaration of Richard G. Adcock Filed Concurrently Herewith

Docket 3240

Tentative Ruling:

11/5/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Amending Key Employee Incentive Plan [Doc. No. 3240] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3231, 3238 and 3240 [Doc. No. 3405]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Motion for Entry of an Order Amending Key Employee Incentive Plan [Doc. No. 3418]
- 3) No opposition to the Motion is on file.

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

On November 28, 2018, the Court approved the Debtors' Key Employee Incentive Plan (the "Original KEIP") and Key Employee Retention Plan (the "KERP"). Doc. No. 893 (the "KEIP/KERP Order"). Under the Original KEIP, certain key employees of the Debtors' Hospitals are entitled to receive bonus payments if (1) the Debtors meet cash flow targets (the "Cash Flow Metric") and if (2) the Debtors close the sale of the Hospitals by specified deadlines (the "Closing Metric"). With respect to the Closing Metric, eligible employees are entitled to receive the following bonus

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CONT... Verity Health System of California, Inc.
payments:

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- 1) 15% of annual salary if the sale closes by March 31, 2019;
- 2) 11% of annual salary if the sale closes by June 30, 2019;
- 3) 7.5% of annual salary if the sale closes by September 30, 2019; and
- 4) 3% of annual salary if the sale closes by December 31, 2019.

On February 28, 2019, the Debtors closed the sale of O'Connor Regional Hospital ("O'Connor") and Saint Louise Regional Hospital ("St. Louise") to Santa Clara County. Eligible employees of O'Connor and St. Louise have received their maximum KEIP bonuses.

The sale of the Debtors' four remaining Hospitals (the "Remaining Hospitals") to Strategic Global Management, Inc. ("SGM" and the "SGM Sale") has not yet closed. Debtors move to amend the Original KEIP to modify the trigger date for the 15% bonus that eligible employees are entitled to receive under the Closing Metric provision (the Original KEIP as amended, the "Amended KEIP"). The proposed amendment would allow seven management employees who work at the Remaining Hospitals (the "Amendment Employees") to receive a 15% bonus payment, provided that the SGM Sale closes on or before December 31, 2019. (Under the Original KEIP, the Amendment Employees are eligible to receive only a 3% bonus if the sale closes on or before December 31, 2019.) If the SGM Sale closes subsequent to December 31, 2019, the Amendment Employees will not receive any bonus under the Closing Metric. Debtors state that the SGM Sale has taken longer than was anticipated at the time the Original KEIP was drafted. According to the Debtors, the Original KEIP prejudices the Amendment Employees by limiting their bonuses solely because of the delay in the sale resulting from the California Attorney General's lengthy review process.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Motion. No other opposition to the Motion is on file.

II. Findings and Conclusions

A. The Debtors are Authorized to Amend the KEIP

Amendment of a KEIP is appropriate where the amendment is sought as a result of circumstances beyond the control of the key employees. In the bankruptcy of LightSquared Inc., the debtors obtained approval of a KEIP that awarded key employees bonuses if the debtors confirmed a plan by a date certain. The

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LightSquared debtors' plan timeline was delayed by unforeseen circumstances, including regulatory delays from the Federal Communications Commission. The debtors sought to amend the KEIP to correspond with the delayed plan confirmation timeline. The Bankruptcy Court approved the proposed amendment and "authoriz[ed] LightSquared to modify and extend LightSquared's existing Key Employee Incentive Plan to accommodate the current facts and circumstances of the Chapter 11 Cases." *Order Authorizing LightSquared to Modify and Extend Existing Key Employee Incentive Plan*, Case No. 12-bk-12080, Doc. No. 2274 at *1 (Bankr. S.D.N.Y. Mar. 27, 2015).

Similar to the situation in LightSquared, the Debtors' timeline for closing the SGM Sale has been delayed by unanticipated regulatory issues. Pursuant to Cal. Corp. Code § 5914, the Debtors submitted the SGM Sale to the review of the California Attorney General (the "Attorney General"). The Debtors requested an expedited review process given their substantial and ongoing operating losses. Notwithstanding this request, the Attorney General used the maximum time permitted under the statute to conduct the review, even availing himself of the 45-day extension under Cal. Corp. Code § 5915.

Closing of the SGM Sale was further delayed by the Attorney General's attempt to impose conditions upon the SGM Sale in excess of the conditions which SGM had agreed to accept. [Note 1] The Asset Purchase Agreement under which SGM agreed to purchase the Hospitals (the "APA") provided that SGM would close the sale so long as any conditions imposed by the Attorney General under the review process set forth in Cal. Corp. Code § 5914 were substantially consistent with conditions that SGM had agreed to accept (the "Approved Conditions"). In the event that the Attorney General sought to impose conditions materially different from the Approved Conditions (the "Additional Conditions"), the APA provided that the Debtors would have an opportunity to seek a determination from the Court that the Hospitals could be sold free and clear of the Additional Conditions under § 363(f). The APA does not require SGM to close the sale unless the Debtors obtain a final, non-appealable order authorizing the sale free and clear of the Additional Conditions. Closing of the SGM Sale has been delayed by the need for the Debtors to seek to obtain a final, non-appealable order authorizing the sale free and clear.

The delays discussed above are not the fault of the key employees and were not anticipated at the time the Debtors designed the KEIP. As was the case in the LightSquared bankruptcy, it is appropriate to permit the Debtors to amend the KEIP.

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B. Application of the *Dana Corp.* Factors Supports Approval of the Amended KEIP

Courts have relied upon the following factors in evaluating key employee incentive plans such as the plan at issue here:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance? (emphasis added)
- Is the cost of the plan reasonable in the context of the debtor’s assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

In re Dana Corp., 358 B.R. 567, 576–77 (Bankr. S.D.N.Y. 2006).

The Amended KEIP is consistent with the factors set forth in *Dana Corp.* The only difference between the Amended KEIP and the Original KEIP, which was previously approved by the Court, is the enlargement of the date triggering bonus payments under the Closing Metric. As discussed above, the regulatory delays necessitating enlargement of this date were not anticipated at the time the KEIP was designed. Further, the circumstances necessitating enlargement are entirely outside the control of the key employees who benefit from the Amended KEIP. Therefore, the Amended KEIP satisfies the *Dana Corp.* factors for the same reasons that the Original KEIP did. [Note 2]

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Specifically, the Amended KEIP appropriately incentivizes Amendment Employees by awarding bonuses under the Closing Metric only if the Debtors close the SGM Sale on or before December 31, 2019. The Amended KEIP is reasonable in the context of the Debtors' assets and liabilities. Compared to the Original KEIP, the incremental cost of the Amended KEIP is \$305,204. This amount is reasonable in the context of the \$610 million SGM Sale. The scope of the Amended KEIP is fair and reasonable. Only seven management employees who work at the four Remaining Hospitals are eligible to receive payments under the Amended KEIP. Finally, the Declaration of Richard G. Adcock, the CEO of VHS, establishes that the Debtors have conducted the requisite due diligence in developing the Amended KEIP.

C. The Amended KEIP Satisfies the Business Judgment Standard

Section 363(b)(1) authorizes the Debtors to use property of the estate, other than in the ordinary course of business, after notice and a hearing. The Debtors are required to articulate a business justification for use of estate property outside the ordinary course of business. *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Here, the Debtors have sufficiently articulated a business justification for the Amended KEIP. As stated above, the Amendment Employees are not responsible for the delays necessitating the enlargement of the date triggering the Closing Metric. The Amended KEIP is necessary to preserve morale as the Amendment Employees confront numerous complex issues while working to close the SGM Sale.

Section 503(c)(3) requires that payments to a debtor's employees outside the ordinary course of business be "justified by the facts and circumstances of the case" to be allowable as an administrative expense. The majority of courts have found that this standard is no different from the business judgment standard under §363(b). *See, e.g., Global Home Prods.*, 369 B.R. at 783-84; *In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (collecting cases); *In re Nobex Corp.*, 2006 WL 4063024 (Bankr. D. Del. Jan. 19, 2006) (concluding that § 503(c)(3) was nothing more than a reiteration of the standard under § 363 under which courts had previously authorized transfers outside the ordinary course of business based on the business judgment of the debtor).

Having found the payments under the Amended KEIP to be appropriate under § 363(b)(1), the Court finds that such payments also meet the standard set forth in § 503(c)(3). Payments under the Amended KEIP are therefore allowable as an

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administrative expense.

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III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A more detailed description of the conditions is set forth in the *Memorandum of Decision Granting Debtors' Emergency Motion to Enforce the Sale Order* [Doc. No. 3446].

Note 2

See Final Ruling Authorizing Original KEIP [Doc. No. 814].

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [3336] Motion For Order Authorizing Disposal Of Patient Records

Docket 0

Tentative Ruling:

11/5/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Order Authorizing Disposal of Patient Records [Doc. Nos. 3336 and 3354 (Motion refiled as Doc. No. 3354 solely to correct docket event code)] (the "Motion")
 - a) Submission of Signature Page of Declaration of Richard G. Adcock in Support of Debtors' Notice of Motion and Motion for Order Authorizing Disposal of Patient Records [Doc. No. 3367]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3336, 3337, 3357 and 3358 [Doc. No. 3496]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

The Debtors move for authorization to dispose of certain patient records in the manner set forth in § 351. Custody of the majority of the Debtors' patient records has been transferred, or will be transferred, to the purchasers of the Debtors' Hospitals. The remaining patient records which the Debtors seek authorization to dispose of include, *inter alia*, records related to physicians no longer affiliated with medical foundations formerly operated by the Debtors. The cost of storing the remaining

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records would be approximately \$165,000 for the next seven years. The Debtors seek to dispose of the records in order to increase the recovery to creditors.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 351 provides:

If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

(1) The trustee shall—

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

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(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

(A) if the records are written, shredding or burning the records; or

(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.

Here, the Debtors intend to comply with all requirements of § 351 with respect to the patient records that the Debtors seek to dispose of (the "Patient Records"). Specifically, the Debtors will:

- 1) Publish notice of the proposed disposal of the Patient Records in the following newspapers of general circulation: (a) the Los Angeles Times, (b) the San Francisco Chronicle, (c) the San Jose Mercury News, and (d) USA Today (the "Published Notice");
- 2) Within 180 days of the Published Notice, notify patients and/or insurance carriers of their right to claim the Patient Records;
- 3) Request permission from the United States Department of Health and Human Services ("DHHS") to deposit any unclaimed Patient Records with the DHHS;
- 4) To the extent that Patient Records remain unclaimed within 365 days of the Published Notice *and* have not been accepted for deposit with the DHHS, destroy the records in the manner specified in § 351(3).

The Court finds that the Patient Records impose an unnecessary financial burden upon the Debtors' estates. Storing the Patient Records for the next seven years will cost \$165,000. The Debtors intend to dispose of the Patient Records in the manner specified in § 351. The Motion is GRANTED in its entirety.

The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [3337] Motion For Order Authorizing Disposal Of Certain Business And Other Non-Patient Records.

Docket 0

Tentative Ruling:

11/5/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Order Authorizing Disposal of Certain Business and Other Non-Patient Records [Doc. Nos. 3337 and 3355 (Motion refiled as Doc. No. 3354 solely to correct docket event code)] (the "Motion")
 - a) Submission of Signature Page of Declaration of Richard G. Adcock in Support of Debtors' Notice of Motion and Motion for Order Authorizing Disposal of Certain Business and Other Non-Patient Records [Doc. No. 3368]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3336, 3337, 3357 and 3358 [Doc. No. 3496]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

The Debtors move for authorization to dispose of certain business and other non-patient records (the "Non-Patient Records") in accordance with an updated records retention policy (the "Alternative Record Retention Policy"). Custody for most of the Non-Patient Records has been transferred, or will be transferred, to the purchasers of the Debtors' Hospitals. The Non-Patient Records at issue include, *inter alia*, charitable foundation records, medical staff records, financial and accounting records,

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human resources records, and legal and compliance records.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 363(c) authorizes a debtor-in-possession to use or dispose of property of the estate in the ordinary course of business. Section 554(a) authorizes a debtor-in-possession to abandon property of the estate that is burdensome or of inconsequential value to the estate.

The Court authorizes the Debtors to dispose of the Non-Patient Records in accordance with the Alternative Record Retention Policy. The Alternative Record Retention Policy is consistent with applicable non-bankruptcy law with respect to the maintenance of the records at issue. The cost of maintaining the Non-Patient Records under the Debtors' current retention policies is in excess of \$110,000 per year. Disposal of the Non-Patient Records in accordance with the Alternative Record Retention Policy will materially reduce storage costs and is therefore in the best interests of the estates and creditors. Records necessary to the continued operation of the Hospitals have been, or will be, transferred to the purchasers of those Hospitals. Because the Debtors will no longer be operating the Hospitals, there is no reason for the Debtors to retain the Non-Patient Records, which are burdensome to the estates.

Based upon the foregoing, the Motion is GRANTED in its entirety, pursuant to §§ 363(c) and 554(a). The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II

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Verity Health System of California, Inc.

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Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Chapter 11

#11.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19

Docket 2157

***** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing
RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19; 10-15-19; 10-23-19

Docket 2995

***** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.10 Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19; 8-7-19; 9-4-19; 10-8-19; 10-22-19

Docket 2579

*** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.

Tentative Ruling:

11/5/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.20 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19; 10-23-19;
10-30-19

Docket 0

***** VACATED *** REASON: CONTINUED 11-13-19 AT 10:00 A.M.**

Tentative Ruling:

8/19/2019

No appearances required. On August 6, 2019, the Court entered an order approving a stipulated continuance of this hearing to September 4, 2019, at 10:00 a.m. See Doc. No. 2856.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#13.00 Order requiring debtor to Appear and Show Cause why this case should not be converted or dismissed

Docket 0

Tentative Ruling:

11/5/2019

No appearances required. This is a hearing on the Court's *Order Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed or Converted* [Doc. No. 126] (the "OSC"). The Court has reviewed the Debtor's Reply (the "Reply") [Doc. No. 139] and, based thereon, finds it appropriate to CONTINUE the OSC hearing to **January 14, 2020 at 10:00 a.m.** The Debtor shall file a written response apprising the Court of any developments concerning issues discussed in its Reply by no later than January 2, 2020.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#14.00 Hearing

RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10401 S Avalon Blvd., Los Angeles, California 90003 . (Bach, Julian)

fr. 10-21-19

Docket 13

Tentative Ruling:

11/5/2019

See Cal. No. 16, incorporated in full by reference.

10/17/2019

For the reasons set forth herein, the Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion") is CONTINUED to **November 6, 2019 at 10:00 a.m.**

The Court determines that issues raised in two outstanding motions—*Trustee's Proposed Abandonment of Property Pursuant to 11 U.S.C. 554 and Local Bankruptcy Rule 6007-1* ("Trustee's Motion") [Doc. No. 15] and *Debtor's Motion to Convert Case under 11 U.S.C. §§ 706(a) or 1112(a)* ("Debtor's Motion") [Doc. No. 17]—are germane to the substantive arguments discussed herein. Therefore, both of the above-referenced motions shall be concurrently heard with the Motion on **November 6, 2019 at 10:00 a.m.**, subject to the following briefing schedule:

Oppositions to the Trustee's Motion, if any, shall be filed no later than **October 18, 2019**; and replies, if any, shall be filed no later than **October 25, 2019**.

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CONT... Cafa Homes Inc.

Chapter 7

Oppositions to the Debtor's Motion, if any, shall be filed no later than **October 21, 2019**; and replies, if any, shall be filed no later than **October 28, 2019**.

The Court will not review any further pleadings concerning the Motion.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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2:19-20444 Cafa Homes Inc.

Chapter 7

#15.00 Hearing

RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9022 Compton Avenue, Los Angeles, CA 90002 . (Krause-Leemon, David)

fr. 10-21-19

Docket 11

Tentative Ruling:

11/5/2019

See Cal. No. 16, incorporated in full by reference.

10/17/2019

For the reasons set forth herein, the Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion") is CONTINUED to **November 6, 2019 at 10:00 a.m.**

First, Movant's proof of service [Doc. 11] does not reflect that the Motion was served on all lienholders as required by Local Bankruptcy Rule 4001-1(c)(1)(C)(iv). By no later than **October 23, 2019**, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Notice on all interested parties pursuant to applicable federal and local rules; and (iii) file a proof of service evidencing compliance with this ruling.

Second, the Court determines that issues raised in two outstanding motions—*Trustee's Proposed Abandonment of Property Pursuant to 11 U.S.C. 554 and Local Bankruptcy Rule 6007-1* ("Trustee's Motion") [Doc. No. 16] and *Debtor's Motion to Convert Case under 11 U.S.C. §§ 706(a) or 1112(a)* ("Debtor's Motion") [Doc. No. 17]—are germane to the substantive arguments discussed herein. Therefore, both of

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CONT... **Cafa Homes Inc.**

Chapter 7

the above-referenced motions shall be concurrently heard with the Motion on **November 6, 2019 at 10:00 a.m.**, subject to the following briefing schedule:

Oppositions to the Trustee's Motion, if any, shall be filed no later than **October 18, 2019**; and replies, if any, shall be filed no later than **October 25, 2019**.

Oppositions to the Debtor's Motion, if any, shall be filed no later than **October 21, 2019**; and replies, if any, shall be filed no later than **October 28, 2019**.

The Court will not review any further pleadings concerning the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, November 6, 2019

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10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#16.00 HearingRE: [17] Motion to Convert Case From Chapter 7 to 11. John)

Docket 17

Tentative Ruling:

11/5/2019

For the reasons set forth below, the Debtor's motion to convert from Chapter 7 to Chapter 11 is DENIED. The motions for relief from the automatic stay filed by Hobart and Bochner are both GRANTED. The Trustee's motions to abandon the 10401 Avalon Property and the Compton Avenue Property are both GRANTED.

Pleadings Filed and Reviewed

1. Debtor's Verified Schedules [Doc. No. 9]
2. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) ("Hobart's R/S Motion") [Doc. No. 11]
3. Debtor's Response to Motion Regarding the Automatic Stay and Declaration(s) in Support [Doc. No. 18]
4. Reply to Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 25] ("Hobart's Reply")
5. Notice of Continued Hearing Date on Hobart Plaza Limited Partnership's Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 [Doc. No. 29]
6. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) ("Bochner's R/S Motion") [Doc. No. 13]
7. Debtor's Response to Motion Regarding the Automatic Stay and Declarations in Support [Doc. No. 19]
8. Reply to Opposition to Motion For Relief From the Automatic Stay [Doc. No. 24] ("Bochner's Reply")
9. Supplemental Declaration of Michael Yates in Response to Dan Z. Boechner Motion for Relief Automatic Stay [Doc. No. 28]
10. Notice of Trustee's Proposed Abandonment of Property pursuant to 11 U.S.C. Section 554 and Local Bankruptcy Rule 6007-1 (the "Motion to Abandon the 10401 Avalon Property") [Doc. No. 15]
11. Notice of Trustee's Proposed Abandonment of Property pursuant to 11 U.S.C.

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- Section 554 and Local Bankruptcy Rule 6007-1 (the "Motion to Abandon the Compton Avenue Property") [Doc. No. 16]
12. Objection to Abandonment of Property (the "Opposition to Abandonment") [Doc. No. 26]
 13. Trustee's Reply to Debtor's Opposition Re Notice of Trustee's Proposed Abandonment of Real Property Located at 10401 South Avalon Boulevard, Los Angeles California 90003 (the "Trustee's Reply") [Doc. No. 34]
 14. Debtor's Motion to Convert Case under 11 U.S.C. §§ 706(a) or 1112(a) (the "Motion to Convert") [Doc. No. 17]
 15. Opposition to Debtor's Motion to Convert to Chapter 11 ("Hobart's Opposition to Conversion") [Doc. No. 32]
 16. Opposition to Debtor's Motion to Convert to Chapter 11 and Request for a Hearing ("Bochner's Opposition to Conversion") [Doc. No. 27]

I. Facts and Summary of Pleadings

CAFA Homes, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 4, 2019 (the "Petition Date"). According to its verified schedules [Doc. No. 9], the Debtor declares that its only assets consist of \$35 in a Wells Fargo account and the following six parcels of real property:

- i. 393 E. 93rd Street, Los Angeles CA 90003
- ii. 9022 Compton Avenue, Los Angeles, CA 90002
- iii. 10401 South Avalon Blvd., Los Angeles, CA 90003
- iv. 10970 South Avalon Blvd., Los Angeles, CA 90061
- v. 417 E. 119th Street, Los Angeles, CA 90051
- vi. 2825 Live Oak St., Huntington Park, CA 90255

On October 21, 2019, the Court scheduled a combined hearing on the Motion to Convert, Hobart's R/S Motion, Bochner's R/S Motion, and the proposed abandonment of certain real property of the estate. As set forth below, these motions are discussed in the chronological order they were filed.

Hobart's R/S Motion

Hobart Plaza Limited Partnership ("Hobart") is the holder and beneficiary of a

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CONT... **Cafa Homes Inc.**

Chapter 7

senior deed of trust granted by Debtor to secure a principal debt of \$175,000 against real property located at 9022 Compton Avenue, Los Angeles, CA 90002 (the "Compton Avenue Property"). On September 26, 2019, Hobart filed its motion for relief from the automatic stay pursuant to §§ 362(d)(1), (d)(2), and (d)(4) as to the Compton Avenue Property [Doc. No. 11]. Under § 362(d)(2), Hobart asserts that Debtor has no equity in the Compton Avenue Property as its total claim of \$240,168.25, in conjunction with numerous other liens and delinquent taxes, amounts to more than \$4 million in debt, far exceeding any reasonable valuation figure,. *See* Hobart's R/S Motion at 8. While Hobart claims the Compton Avenue Property is worth \$290,000 based on its 2016 sale for \$275,000, on its schedules, the Debtor attests that the property was appraised at \$475,000. *See id.*, ¶ 11(d); Doc. No. 9. Hobart argues that even if the Court accepts the Debtor's valuation of \$475,000, the Compton Avenue Property remains hopelessly underwater, being encumbered by indebtedness in excess of \$4 million.

However, Hobart's primary argument is that the Debtor filed this petition in bad faith, or to further a scheme to delay, hinder, or defraud creditors. The evidentiary record presented by Hobart is voluminous and bears striking resemblance to the events described in Bochner's R/S Motion. In short, Hobart has been unable to foreclose on the Compton Avenue Property on five different occasions within the last year due to the bankruptcy filing of individuals claiming an interest therein. *See* Hobart's R/S Motion, Real Property Declaration of Abraham Ohebsion at ¶¶ 20 – 66 (providing a chronological account of attempted foreclosure sales.). Based on the record advanced by Hobart, the Court summarizes the extensive history of prior bankruptcy filings concerning the Compton Avenue Property as follows:

1. Prior to a foreclosure sale scheduled on May 20, 2019, Hobart received an email purportedly from Debtor's president, Carlos Flores ("Flores"), notifying of a voluntary Chapter 13 petition commenced by Carolina Villalvazo on May 16, 2019. *See* Declaration of Krause-Leemon ("Krause-Leemon Decl."), ¶¶ 4 – 9. Ms. Villalvazo claimed an interest of \$7,500 in the Compton Avenue Property by virtue of a deed of trust executed by Flores on November 17, 2017. *Id.* Villalvazo's bankruptcy petition was dismissed on June 3, 2019 because she failed to file all required documents. *Id.*
2. Prior to a second foreclosure sale, which had been postponed to June 12, 2019, Hobart received another email purportedly from Flores notifying of a

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- second bankruptcy petition filed by Carolina Villalvazo on June 10, 2019. *See id.*, ¶¶ 11 – 20. Ms. Villalvazo claimed another interest of \$7,500 in the Compton Avenue Property by virtue of a second deed of trust executed by Flores on November 17, 2017. *See id.* As with the prior bankruptcy, Villalvazo's second petition was dismissed on July 25, 2019 because she failed to appear at the meeting of the creditors. *See id.*
3. Prior to a third postponed foreclosure sale on August 2, 2019, Hobart received another email purportedly from Flores notifying of a new bankruptcy petition, this filed by a Jose Santiago on July 26, 2019. *See id.*, ¶¶ 22 – 31. Like past bankruptcies, Mr. Santiago claimed an interest of \$7,500 in the Compton Avenue Property by virtue of a deed of trust executed by Flores on September 8, 2017. *Id.* Some of the commencement documents provided in Santiago's petition were signed by one "Jose Ruiz." *See* Hobart's R/S Motion, Ex. 9. As with the prior bankruptcies, Santiago's petition was dismissed shortly after commencement on August 13, 2019. Krause-Leemon Decl., ¶ 31.
 4. Prior to a fourth postponed foreclosure sale on August 16, 2019, Hobart yet again received an email purportedly from Flores notifying of a new bankruptcy petition, this filed by a Jason Green on August 13, 2019. *See id.*, ¶¶ 33 – 39. Mr. Green claimed an interest of \$3,200 in the Compton Avenue Property by virtue of an unrecorded deed of trust executed by Flores on May 29, 2018. *See id.* As with the prior bankruptcies, Green's petition was dismissed on September 9, 2019 because the debtor failed to lodge required commencement documents. *See id.*, ¶ 48.
 5. For a fifth time, prior to a foreclosure sale postponed to August 30, 2019, Flores apparently notified Hobart of another bankruptcy petition, filed by a Carmen Aguilar on August 29, 2019. *See id.*, ¶¶ 40 – 50. Ms. Aguilar claimed an interest of \$2,750 in the Compton Avenue Property by virtue of a deed of trust executed by Flores. *See id.* Unlike previous deeds of trust, the document in question was dated October 24, 2014, purportedly signed on October 24, 2016, and had not been recorded as of August 14, 2019. *See id.* at 43. Predictably, Aguilar's petition was dismissed on September 16, 2019 soon after it was filed because the debtor failed to complete required documents. *See id.*, ¶ 48.
 6. Moreover, Hobart's counsel later learned that the schedules actually filed by each of the aforementioned debtors do not reflect any interests in the

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Compton Avenue Property, differing from the schedules purportedly e-mailed by Flores to Hobart on the eve of foreclosure, which do demonstrate interests in said property. Krause-Leemon Decl., ¶¶ 46 – 47.

On September 18, 2019, in preparation for a sixth postponed foreclosure sale, Hobart independently discovered that Debtor had commenced the instant case. Based on the foregoing history, Hobart contends that this case, and the cases referenced above, are part of a scheme to delay, hinder, or defraud Hobart and junior lienholders.

Opposition to Hobart's R/S Motion and Hobart's Reply

On October 15, 2018, the Debtor filed the Opposition to Hobart's R/S Motion [Doc. No. 18]. In opposition, Debtor completely disregards allegations concerning the claimed pattern of fraud perpetrated by Debtor and Flores, instead opting to challenge relief from stay solely on § 362(d)(2) grounds. The Debtor counters that there is sufficient equity in the Compton Avenue Property and attaches an appraisal valuing said property at \$475,000. Opposition to Hobart's R/S Motion, Ex. 1. Flores further attests that conversion to Chapter 11 will enable the Debtor to substantially improve the Compton Avenue Property, enhancing its current value to \$700,000 or more. Declaration of Carlos Flores in Response to Hobart' R/S Motion, ¶¶ 6 – 7. Neither Flores nor Debtor explain the basis for this speculated increase in value. Accordingly, the Court understands that the Debtor's defense heavily rests in the success of the Motion to Convert.

On reply, Hobart repeats much of the information already provided in its moving papers but does emphasize the obvious detail that the property is significantly underwater regardless of its disputed valuation. Moreover, Hobart notes that Debtor did not address any allegations concerning past fraudulent conduct. In sum, Hobart requests that the Court halt Debtor's abusive bankruptcy practices thwarting its legitimate foreclosure efforts.

Bochner's R/S Motion

On September 27, 2019, Dan Z. Bochner ("Bochner") filed a motion seeking relief from the automatic stay to foreclose on a mixed-use commercial and residential building located at 10401 South Avalon Blvd., Los Angeles, CA 90003 (the "10401 Avalon Property," and together with the Compton Avenue Property, the "Properties").

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Bochner holds a recorded senior deed of trust in the amount of \$477,000, granted by Flores and secured by the 10401 Avalon Property (the "Note"). *See* Bochner's R/S Motion, Ex. A. The Note became due on December 31, 2014; the full amount of Bochner's claim is \$624,354.35 as of September 27, 2019. *Id.* at 7. On its *Schedule A/B: Assets – Real and Personal Property*, the Debtor estimates the fair market value of the 10401 Avalon Property at \$1,100,000. *See id.*, Ex. C.

Bochner seeks relief from automatic stay under §§ 362(d)(1), (d)(2), and (d)(4). First, Bochner argues for relief under § 362(d)(2) because the Debtor has no equity in the 10401 Avalon Property, and it is not necessary to an effective reorganization. Accordingly, Bochner's total claim, along with five additional junior liens and unpaid property taxes, comprise of debt in the sum of \$1,309,035.88, which exceeds the 10401 Avalon Property's estimated fair market value of \$1,100,000. Bochner's R/S Motion at 7 – 8. Once sale costs are added to the total indebtedness claimed against the 10401 Avalon Property, Bochner concludes that the Debtor has no net equity in the 10401 Avalon Property [**Note 1**]. *See id.* at 9.

Next, with respect to grounds asserted under § 362(d)(1), Bochner contends that the Debtor initiated this petition in bad faith—it being the third bankruptcy case in a year to implicate interests in the 10401 Avalon Property. The following facts are not disputed by the Debtor. On September 20, 2018, a deed of trust was recorded, in which Flores appeared to grant an interest in the 10401 Avalon Property to Michael Angelo Vertiz ("Vertiz") and Christina Saucedo ("Saucedo") to secure a loan for \$28,000. Bochner's R/S Motion at 4a. The instrument was recorded one day before Terra Nova Capital ("Terra Nova"), a junior lienholder, was set to foreclose on the 10401 Avalon Property. *See id.* In addition, Bochner claims that this transaction transpired without his consent or knowledge, and in contravention with the terms of the Note. *See id.* On September 17, 2018, Saucedo commenced a voluntary chapter 7, wherein the Honorable Barry Russell granted Terra Nova's request to lift the stay against the 10401 Avalon Property on October 25, 2018. *See id.*; *see also* Ex. G. Days later, Vertiz similarly filed Chapter 13 case on September 21, 2018, which was summarily dismissed on October 9, 2018 due to Vertiz's failure to file required documents. *See* Bochner's R/S Motion at 4a; *see also* Ex. F. For the reasons set forth above, Bochner argues that this case was also part of a scheme to delay, hinder, or defraud creditors under § 362(d)(4).

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On October 7, 2019, the Debtor filed the Opposition to Bochner's R/S Motion. The Debtor argues that the 10401 Avalon Property has a fair market value of \$1,350,000, and therefore, Bochner's claim is adequately protected by an equity cushion of approximately \$625,645.65. The Debtor bases this new valuation upon a "restricted" appraisal conducted by Pacific Valuation Real Estate Services ("Pacific"), current as of September 20, 2019. *See* Opposition to Bochner's R/S Motion, Ex. 1. Additionally, Flores provides a declaration, attesting that he ordered the appraisal to facilitate pre-petition plans to refinance the 10401 Avalon Property, and thereby enhance its resale value through physical renovation. Flores Decl. [Doc. No. 19] at ¶ 3. As he did in the Opposition to Hobart's R/S Motion, Flores again alludes to the Motion to Convert, claiming that the 10401 Avalon Property is necessary to the Debtor's successful reorganization. *Id.* at ¶¶ 2, 7. As to Bochner's additional contentions, the Debtor generally denies that this case was filed in bad faith, but it does not expressly address either the bankruptcy petitions filed by Vertiz and Saucedo, or the interests purportedly transferred to these individuals.

Bochner's Reply

On October 11, 2019, Bochner filed a response, summarizing the record of evidence supporting his valuation of the 10401 Avalon Property and estimated total of all liens. Bochner also restates prior arguments, including those concerning the history of bankruptcy abuses allegedly perpetrated by Flores and Debtor. Specifically, Bochner emphasizes that Debtor failed to refute that it engaged in a practice characterized as "hijacking." Bochner relies on the discussion provided in *In re Vazquez*, 580 B.R. 526, 528 (Bankr. C.D. Cal. 2017)—describing "hijacking" as a scheme to transfer a borrower's distressed assets to a debtor entering bankruptcy to invoke automatic stay relief and delay any nonbankruptcy procedures. Bochner's Reply at 2. Accordingly, Bochner appears to suggest that the Debtor engaged in hijacking by transferring its interest in the 10401 Avalon Property to Vertiz and Saucedo. *See id.* at 2, 6 – 7. Separately, Bochner contends that the appraisal offered by Debtor is inadmissible and unauthenticated, but in any case, Debtor does not possess any equity under either valuation. *Id.* at 6.

Trustee's Motions to Abandon the Properties

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Brad Krasnoff, the Chapter 7 Trustee (the "Trustee") filed two separate notices for the proposed abandonment of the Properties pursuant to 11 U.S.C. § 554 [Doc. Nos. 15 and 16].

The Debtor timely filed the Opposition to Abandonment, objecting only to the abandonment of the 10401 Avalon Property on the grounds that it possesses equity therein. Further, the Debtor briefly mentions the Motion to Convert and counters that the 10401 Avalon Property will be fundamental to Debtor's reorganization. As of the preparation of this tentative ruling, the Motion to Abandon the Compton Avenue Property has not been opposed.

On reply, the Trustee attests that a title search obtained from William Friedman of Coldwell Banker shows that the 10401 Avalon Property is subject to three additional liens not discussed in Bochner's R/S Motion: one held by PRC Residential in the amount of \$3,795,000, and two (2) held by a party named "Vertiz" for \$28,000 and \$10,000, respectively. Declaration of Brad Krasnoff, ¶¶ 3 – 4. Furthermore, according to an exterior evaluation performed on or about September 23, 2019, the 10401 Avalon Property has an estimated value of just \$795,000. *Id.*, ¶ 6. Based on these findings, the Trustee concludes that the 10401 Avalon Property has no net equity to administer for the benefit of creditors.

Motion to Convert

On October 4, 2019, the Debtor filed the Motion to Convert, which is substantively limited to the terse details requested in the two-page mandatory form. Debtor generally seeks to convert its voluntary Chapter 7 petition to Chapter 11. No attachments or declarations are included therein. Aside the assertions made in Flores's declarations in opposition to different motions, the Debtor has not filed a reply or other supplemental briefing supporting the Motion to Convert.

Oppositions to the Motion to Convert

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Both Hobart and Bochner (collectively, the "Creditors") filed separate oppositions to the Motion to Convert [Doc Nos. 27, 32], where each creditor refers to and incorporates therein the factual narrative previously proffered in their motions for relief from stay. The Creditors strongly object to the requested conversion on two grounds: 1) Debtor is disqualified to act as a Chapter 11 fiduciary based on its expansive history of bankruptcy abuse, and 2) Debtor has offered no evidence that it can successfully reorganize.

As to the former grounds, the Creditors rely upon *In re Hunter* which stands for the proposition that a Chapter 7 debtor seeking to convert to Chapter 11 "must be eligible to be a debtor under that chapter and not subject to conversion or dismissal" for reasons that include "bad faith." *In re Hunter*, 597 B.R. 287, 292 (Bankr. M.D.N.C. 2019) (citing *In re Daughtrey*, 896 F.3d 1255 (11th Cir. 2018).); Hobart's Opposition to Conversion at 4; Bochner's Opposition to Conversion at 4. Creditors point to the legal principle articulated in *In re Hunter* in concluding that the Debtor's actions are textbook examples of "fraudulent bad faith bankruptcy conduct." Hobart's Opposition to Conversion at 8. Additionally, Hobart highlights that Debtor never disclosed any of the factual history discussed above in any of its commencement documents, or any other subsequent filings. *Id.* In sum, the Creditors submit that Debtor should be disqualified from acting as Chapter 11 fiduciary, with a referral to the U.S. Trustee's Fraud Division being more appropriate. Bochner's Opposition to Conversion at 6 – 7.

As to the latter grounds, the Creditors reiterate many of their previous points. Hobart posits that even if the Court were to overlook the fraud and bad faith allegations, the Debtor's schedules indicate that there is no viable path to a successful Chapter 11 reorganization. Hobart's Opposition to Conversion at 9. Accordingly, the Debtor only has \$35 in cash, and the indebtedness encumbering the Compton Avenue Property alone (\$4,365,259.66) is larger than the combined value of Debtor's interest in its six parcels of real property (\$3,339,600). *Id.*; Ex. A. In fact, Hobart plans to file a motion to convert this case back to Chapter 7, if the Motion to Convert is granted.

As of the preparation of this tentative ruling, no reply has been filed.

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II. Findings of Fact and Conclusions of Law

A. The Debtor is ineligible to proceed under Chapter 11 based on a pattern of fraudulent and bad faith pre-petition conduct.

Section 706(a) provides that the "debtor may convert a case under [chapter 7] to a case under chapter 11 ... of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable."

The Creditors contend that the Motion to Convert should be denied based on the Debtor's alleged bad faith and fraudulent conduct. The Creditors support their position by relying on *In re Hunter, supra*, which itself cites to the Supreme Court's decision in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). In *Marrama*, the Supreme Court considered whether § 706(a) provided a Chapter 7 debtor the absolute right to convert to Chapter 13. Noting that § 1307(c) permits the bankruptcy court to convert or dismiss a Chapter 13 case for "cause," the *Marrama* Court found that the bankruptcy court was not required to convert a Chapter 7 case to Chapter 13 where circumstances existed that would justify dismissal under § 1307(c): "Nothing in the text of either § 706 or § 1307(c) (or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor. On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors." *Id.* at 374-75 (footnotes omitted).

The reasoning in *Marrama* applies with equal force even in a motion to convert from Chapter 7 to Chapter 11. Similarly to § 1307(c), Chapter 11 permits courts to dismiss or convert a Chapter 11 case for "cause." *See* § 1112(b). Rather than granting a motion to convert from Chapter 7 to Chapter 11 and then dismissing or re-converting the Chapter 11 case for "cause," the bankruptcy court may simply deny the original motion to convert to Chapter 11 under the mantle of "broad

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authority" alluded in *Marrama*. See, e.g. *In re Daughtrey*, 896 F.3d at 1276.

Section 1112(b) enumerates sixteen non-exclusive circumstances which constitute "cause" for conversion or dismissal. "It is well-settled that even though Chapter 11 does not expressly so state, bad faith may serve as a ground for dismissal of a petition." *In re Charfoos*, 979 F.2d 390, 392 (6th Cir. 1992); see 11 U.S.C. § 1112(b) (grounds for dismissal); see also *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994) ("[a]lthough section 1112(b) does not explicitly require that cases be filed in "good faith," courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal."). As one court explained: "Bankruptcy is an equitable remedy whereby a debtor is clothed with the protection of an automatic stay, preventing his creditors from acting against him for a period of time, in order to facilitate rehabilitation or reorganization of his finances and to promote a 'fresh start' through the orderly disposition of assets to satisfy his creditors. Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings. Such a standard furthers the balancing process between the interests of debtors and creditors which characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy." *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1071-72 (5th Cir. 1986) (internal citations omitted).

To determine whether a petition is filed in bad faith, courts consider a variety of circumstances: "'The existence of good faith depends on an amalgam of factors and not upon a specific fact.' The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch, supra* (citing *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986)). Furthermore, a finding of bad faith may be based on pre-petition conduct. See, e.g., *In re Owens*, 552 F.3d 958 (9th Cir. 2009) (affirming dismissal of Chapter 11 case on the grounds that the "bankruptcy was filed in bad faith as a litigation tactic intended to delay" the sale of real property); *In re Charfoos*, 979 F.2d at 392 – 93 ("pre-petition conduct is sufficient to establish bad faith"). Moreover, like Chapter 7 trustees, principals of Chapter 11 debtors are responsible for overseeing creditors' best interests: "[w]hen the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors." *In re Anchorage Nautical Tours, Inc.*, 145 B.R. 637, 643 (9th Cir. B.A.P

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1992) (finding that debtor's president violated its fiduciary duty to creditors by surrendering estate assets without notice) (internal citations omitted).

Here, the evidence of pre-petition bad-faith is extensive. The Creditors have both submitted a comprehensive record showing clearly that Flores transferred nominal interests in the Properties to third parties, and that repeatedly and strategically said parties commenced bankruptcy petitions on the eve of numerous foreclosure sales. As discussed above, the Court finds that the Properties have been implicated in no less than eight (8) bankruptcies in the last fourteen (14) months. Many, if not all, of the bankruptcy petitions concerning the Properties share discrepancies and characteristics indicative of fraud.

Notably, all of these cases were summarily dismissed within weeks because of the debtors' inability to accomplish basic commencement tasks. The timing of these filings is also particularly suspect. For example, Saucedá filed a voluntary Chapter 7 petition on September 17, 2018, just four days before Terra Nova foreclosed on the 10401 Avalon Property and dismissed two months later. *See* 2:18-bk-20815-BR, Doc. Nos. 1, 23. Comparably, Vertiz filed a voluntary Chapter 13 petition on September 21, 2018, the day of the same foreclosure sale, which was also dismissed approximately two months later for his failure to submit all required commencement documents. *See* 2:18-bk-21065-VZ, Doc. Nos. 1, 31. The pattern highlighted above parallels each of the petitions affecting the Compton Avenue Property.

Furthermore, there are a litany of discrepancies and misrepresentations in many of the documents filed in these bankruptcy petitions. The following are some of the most egregious examples observed. Vertiz's initial schedules disclose his interest in the 10401 Avalon Property as his only asset, while Terra Nova and Bochner are identified as two of his three only creditors. *See* 2:18-bk-21065-VZ, Doc. No. 1. Weeks later, after Terra Nova had rescheduled its foreclosure, Vertiz filed amended schedules completely removing mention of the 10401 Avalon Property, Terra Nova, and Bochner. *See* 2:18-bk-21065-VZ, Doc. No. 13. In an apparent scheme to derail Hobart's foreclosure on the Compton Avenue Property, shortly after a new bankruptcy was initiated by a third-party debtor, Flores allegedly e-mailed a series of documents to Hobart, which included such debtors' schedules reflecting an interest in the Compton Avenue Property. Krause-Leemon Decl., ¶¶ 46 – 47. However, the

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schedules provided by Flores differ from the schedules that had actually been filed, which did not reflect an interest in the Compton Avenue Property. *Id.* Suffice it to say, the Court finds it disconcerting that Debtor neglected to disclose any of these bankruptcy proceedings in its schedules and subsequent pleadings.

The common denominator in each of these bankruptcies is Flores. The Court observes that many of the instruments through which he purportedly transferred real property interests bear the seal of a notary public, certifying under penalty of perjury that Flores personally signed the documents. And neither Debtor nor Flores deny or even challenge any of the alleged bad faith. Given Debtor's silence on this issue, and in consideration of the vast record proffered, the Court is persuaded that the Debtor perpetrated bankruptcy fraud pre-petition, through its principal, sufficient to establish bad faith. In light of the Debtor's bad faith conduct, the Court finds that Flores is not qualified to serve as a fiduciary for any of Debtor's creditors in a Chapter 11 proceeding. *See In re Anchorage Nautical Tours, Inc.*, 145 B.R. at 643 ("[w]hen the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors.").

For the reasons stated above, the Court finds that the Debtor is ineligible to proceed under Chapter 11 based on its pre-petition bad faith conduct. Accordingly, the Motion to Convert is DENIED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

B. Relief from the automatic stay is GRANTED as to the Properties based on evidence of fraudulent conduct and because Debtor does not have any equity therein.

Section 362(d)(4) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay with respect to an act against

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the property if the court finds that the filing of the petition was part of a scheme to delay, hinder or defraud creditors that involved either (1) the transfer of all or part ownership of or interest in the property without the consent of the secured creditor or court approval or (2) multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4).

"[T]he Code requires more than just the occurrence of...multiple filings. It requires that 'the filing of the petition was part of a scheme to delay, hinder or defraud creditors.'" *In re Khurana*, 2015 Bankr. LEXIS 2399, at *23-24 (Bankr. D. Idaho July 21, 2015). Factors considered in determining whether the filing of the petition was part of a scheme to delay, hinder or defraud include:

The number of bankruptcy filings; their frequency; the time lapsed between filings; whether the filings were dismissed, and for what reasons; whether the evidence suggests that the debtor had a legitimate belief that it could reorganize in such cases; the strategic timing of the cases, especially in relation to creditor collection efforts such as foreclosure; any changes in circumstances between the various case; and others.

Id. at *25-26.

The Court incorporates the findings made in connection with the Motion to Convert and thereby determines that there is sufficient evidence to grant the Creditors' motions for relief from stay based on §§ 362(d)(1) and (d)(4) grounds alone. This bankruptcy petition and at least eight other petitions were filed as part of a scheme to delay and hinder the Creditors' efforts to exercise their state law foreclosure rights as to the Properties. For the same reasons, both motions for relief from stay are granted pursuant to § 362(d)(1) based on the Debtor's bad faith filing.

Additionally, the Court further determines that the Creditors are entitled to relief from stay under § 362(d)(2) because Debtor has no equity in either the Compton Avenue Property or the 10401 Avalon Property. In response to the arguments under § 362(d)(2), Debtor contends that the Creditors enjoy a substantial equity cushion in each respective property, sufficient to provide their claims with adequate protection. Debtor submits two restricted appraisals from Pacific valuing the Compton Avenue Property and the 10401 Avalon Property at \$475,000 and \$1,350,000, respectively.

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See Debtor's Opposition to Hobart's R/S Motion, Ex. 1; Debtor's Opposition to Bochner's R/S Motion, Ex. 1. The appraisals' legitimacy and valuations reached therein have been put into question by the Creditors and the Trustee. *See* Hobart's Reply at 2; Bochner's Reply at 3 ; Trustee's Reply at 2.

The Court need not make any findings with respect to the validity of the Pacific appraisals because even if the Properties are valued as appraised, each property remains substantially underwater and would not provide the estate with any equity. Accordingly, the liens asserted against the 10401 Avalon Property, inclusive of estimated sale costs, total \$1,397,035.88, providing equity of -\$47,035.88. *See* Bochner's R/S Motion at 8 – 9. Furthermore, according to the Trustee's title search, there is an additional lien of \$3,795,000 in favor of PRC Residential. *See* Krasnoff Decl., ¶ 4 [Doc. No. 34]. Similarly, the sum of all liens encumbering the Compton Avenue Property, inclusive of sale costs, is approximately \$4,365,259.66, leaving equity of -\$3,928,259.66. Hobart's Reply at 4. Moreover, the Debtor fails to challenge or even acknowledge the validity of any liens over-encumbering the Properties. Based on the foregoing, the Court agrees with Hobart that the liens encumbering the Properties eclipse the collective value of assets in the estate "not just by a little [but] by a lot." *See* Hobart's Opposition to Conversion at 9.

For the reasons set forth above, Hobart's R/S Motion is GRANTED pursuant to §§ 362(d)(1), (d)(2) and (d)(4). Bochner's R/S Motion is GRANTED on the same grounds.

The Court grants the following relief with respect to both motions: The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Hobart is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference with respect to Hobart's R/S Motion only, within seven

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days of the hearing.

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Bochner is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference with respect to Bochner's R/S Motion only, within seven days of the hearing.

C. Pursuant to 11 U.S.C. § 554, the Trustee may abandon the Properties.

Section 554(a) provides that a Trustee "may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." The Court incorporates the findings stated above and determines that the Trustee may abandon both the 10401 Avalon Property and the Compton Avenue Property as they possess no value that can benefit the estate. The Debtor objected to the abandonment of the 10401 Avalon Property citing to the pending Motion to Convert, but because said motion has been denied, the Court overrules the objection.

Based on the foregoing, the Motion to Abandon the 10401 South Avalon Property is GRANTED. The Motion to Abandon the Compton Avenue Property is GRANTED for the same reasons.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference with respect to the motions discussed in this section only, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The estimated cost of selling the 10401 Avalon Property is \$88,000, which is based upon 8% of the estimated gross sale receipts. Bochner's Motion at 9.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 6, 2019

Hearing Room 1568

10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01391 Elissa D. Miller, solely in her capacity as chapte v. Premium Energy

#1.00 Cont'd Status Hearing

RE: [1] Adversary case 2:18-ap-01391. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Premium Energy Solutions, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

fr. 3-19-19; 6-11-19; 8-13-19

Docket 1

***** VACATED *** REASON: DISMISSED 9-6-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Premium Energy Solutions, Inc., a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01406 Elissa D. Miller, solely in her capacity as chapte v. Jonathan Jackson

#2.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01406. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against Jonathan Jackson Company, a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Preservation of Preferential Transfers, and (3) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Lev, Daniel)

fr: 3-19-19; 6-11-19; 8-13-19

Docket 1

***** VACATED *** REASON: DISMISSED 11-4-19**

Tentative Ruling:

8/9/2019

No appearances required. The Court has entered an order continuing this Status Conference to **November 12, 2019, at 10:00 a.m.** given the settlement of this action.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

Jonathan Jackson Company, a

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

Adv#: 2:18-01413 Elissa D. Miller, solely in her capacity as chapt v. JSA Engineering, Inc., a

#3.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01413. Complaint by Elissa D. Miller, solely in her capacity as chapter 7 trustee against JSA Engineering, Inc., a California corporation. (Charge To Estate). Complaint for (1) Avoidance and Recovery of Preferential Transfers, (2) Avoidance and Recovery of Fraudulent Transfers, (3) Preservation of Preferential and Fraudulent Transfers, and (4) Disallowance of Claims Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Lev, Daniel)

FR. 3-19-19; 6-11-19; 8-13-19

Docket 1

***** VACATED *** REASON: DISMISSED 8-19-19**

Tentative Ruling:

6/10/2019

See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Defendant(s):

JSA Engineering, Inc., a California

Pro Se

Plaintiff(s):

Elissa D. Miller, solely in her

Represented By
Asa S Hami
Daniel A Lev

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... QUIGG LA11, LLC

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 7

Adv#: 2:19-01255 Ehrenberg, Chapter 7 Trustee v. Hsu, an Individual

#4.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01255. Complaint by Howard M Ehrenberg, Chapter 7 Trustee against George Hsu, an Individual. (Charge To Estate). Complaint For Avoidance and Recovery of Fraudulent Transfers and Preferential Transfers Pursuant to 11 U.S.C. §§ 544, 547(b), 548, 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE ON AMENDED COMPLAINT 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

Defendant(s):

George Hsu, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg, Chapter 7

Represented By
Steven Werth

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-16493 Robert Arutyunyan

Chapter 7

Adv#: 2:19-01380 Janamian v. Arutyunyan et al

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01380. Complaint by Soroush Janamian against Robert Arutyunyan , Klaris Nazaryan . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(65 (Dischargeability - other)) (Collins, Kim S.)

Docket 1

***** VACATED *** REASON: CONTINUED 11-19-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Arutyunyan

Represented By
Asbet A Issakhanian

Defendant(s):

Robert Arutyunyan

Pro Se

Klaris Nazaryan

Pro Se

Joint Debtor(s):

Klaris Nazaryan

Represented By
Asbet A Issakhanian

Plaintiff(s):

Soroush Janamian

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:13-12806 Lenore Pride

Chapter 11

Adv#: 2:19-01288 Pride v. JP MORGAN CHASE BANK et al

#6.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01288. Complaint by Lenore Pride against JP MORGAN CHASE BANK, Quality Loan Service Corp.. (Fee Not Required).
Nature of Suit: (91 (Declaratory judgment)) (Khang, Joon)

Docket 1

***** VACATED *** REASON: DISMISSED 11-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lenore Pride

Represented By
Joon M Khang

Defendant(s):

JP MORGAN CHASE BANK

Pro Se

Quality Loan Service Corp.

Pro Se

DOES 1-10, Inclusive

Pro Se

Plaintiff(s):

Lenore Pride

Represented By
Joon M Khang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01002. Complaint by ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency. (Charge To Estate). /COMPLAINT FOR BREACH OF WRITTEN CONTRACTS, TURNOVER, UNJUST ENRICHMENT, DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY, AND INJUNCTIVE RELIEF (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Adversary Proceeding Cover Sheet # 7 Notice of Required Compliance Bk Rule 7026) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

fr: 3-12-19;fr. 4-2-19; 4-3-19; 6-19-19

Docket 1

Tentative Ruling:

11/7/2019

On April 15, 2019, the Court stayed this action pending the completion of arbitration of the claims for relief asserted in the Complaint. Doc. Nos. 38 and 43. The Court found that it lacked discretion to decline to enforce an arbitration provision with respect to the non-core claims for breach of contract, unjust enrichment, and turnover. With respect to the remaining core claims for violation of the automatic stay and injunctive relief, the Court found that arbitration would not conflict with the purposes of the Bankruptcy Code, given that the amount at issue in connection with the core claims (approximately \$360,000) was inconsequential when compared to the amount at issue in connection with the non-core claims (approximately \$25 million). Consequently, the Court found that it was required to enforce the arbitration provision even with respect to the core claims.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Plaintiffs have filed an arbitration demand with JAMS. An arbitrator has been selected, and arbitration is set to convene on April 20, 2020.

A continued Status Conference shall be held on **May 12, 2020, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the arbitration, shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho

Defendant(s):

LOCAL INITIATIVE HEALTH

Pro Se

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#8.00 Status conference RE: [17] Motion For Entry of Order Dismissing Complaint or, In The Alternative, Motion For Entry of Order Staying Trial of Adversary Proceeding, And Memorandum of Points And Authorities In Support Thereof

fr. 4-2-19; 4-3-19; 6-19-19

Docket 13

***** VACATED *** REASON: DUPLICATE OF NO. 7**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By
Neal L Wolf

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#9.00 Status conference

RE: [20] Motion for Protective Order and Memorandum of Points and Authorities
in Support Thereof

fr. 4-2-19; 4-3-19; 6-19-19

Docket 20

***** VACATED *** REASON: DUPLICATE OF NO. 7**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH

Represented By

Neal L Wolf

Anthony Dutra

Plaintiff(s):

ST. VINCENT MEDICAL

Represented By

Steven J Kahn

ST. FRANCIS MEDICAL

Represented By

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01377 Packaging Corporation of America v. Bonert et al

#10.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01377. Notice of Removal of Civil Action to United States Bankruptcy Court with proof of service by Michael Bonert, Vivien Bonert. Nature of Suit: (01 (Determination of removed claim or cause)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))),(13 (Recovery of money/property - 548 fraudulent transfer)) (Forsley, Alan)

Docket 1

*** VACATED *** REASON: AMENDED COMPLAINT FILED 10-15-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Represented By
Alan W Forsley

Bonert Management Company, Inc.

Represented By
Alan W Forsley

Bonert's Jadahasa, LLC

Represented By
Alan W Forsley

Bonert's MV, LLC

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Bonert's Mibon LLC

Represented By
Alan W Forsley

Beefam, LLC

Represented By
Alan W Forsley

Bonert's 3144, LLC

Represented By
Alan W Forsley

DOES 1-10

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Packaging Corporation of America

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01377 Packaging Corporation of America v. Bonert et al

#11.00 Status Hearing

RE: [10] Amended Complaint with proof of service by Scott E Blakeley on behalf of Packaging Corporation of America against Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's 3144, LLC, Bonert's Incorporated dba Bonert's Slice of Pie, Bonert's Jadahasa, LLC, Bonert's MV, LLC, Bonert's Mibon LLC, DOES 1-10. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Judgement) (Blakeley, Scott)

Docket 10

***** VACATED *** REASON: REMANDED TO THE DISTRICT COURT
ON 10-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadahasa, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Bonert's Mibon LLC

Represented By
Lawrence M Jacobson

Beefam, LLC

Represented By
Lawrence M Jacobson

DOES 1-10

Pro Se

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Packaging Corporation of America

Represented By
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01378 Coastal Carriers, LLC v. Bonert et al

#12.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01378. Notice of Removal of Civil Action to United States Bankruptcy Court with proof of service by Michael Bonert, Vivien Bonert. Nature of Suit: (01 (Determination of removed claim or cause)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))),(13 (Recovery of money/property - 548 fraudulent transfer)) (Forsley, Alan)

Docket 1

*** VACATED *** REASON: AMENDED COMPLAINT FILED 10-15-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Represented By
Alan W Forsley

Bonert Management Company, Inc.

Represented By
Alan W Forsley

Bonert's Jadahasa, LLC

Pro Se

Beefam, LLC

Represented By
Alan W Forsley

Bonert's 3144, LLC

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert
DOES 1-10

Chapter 11

Represented By
Alan W Forsley

Bonert's MV, LLC

Represented By
Alan W Forsley

Bonert's Mibon LLC

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Coastal Carriers, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01378 Coastal Carriers, LLC v. Bonert et al

#13.00 Status Hearing

RE: [10] Amended Complaint with proof of service by Scott E Blakeley on behalf of Coastal Carriers, LLC against Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's 3144, LLC, Bonert's Incorporated dba Bonert's Slice of Pie, Bonert's Jadahasa, LLC, Bonert's MV, LLC, Bonert's Mibon LLC, DOES 1-10. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Judgement) (Blakeley, Scott)

Docket 10

***** VACATED *** REASON: REMANDED TO THE DISTRICT COURT
ON 10-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadahasa, LLC

Represented By
Lawrence M Jacobson

Beefam, LLC

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

DOES 1-10

Pro Se

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Coastal Carriers, LLC

Represented By
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01405 Capitol Distribution Company, LLC v. Bonert et al

#14.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01405. Notice of Removal of Civil Action to United States Bankruptcy Court with proof of service by Michael Bonert, Vivien Bonert. Nature of Suit: (01 (Determination of removed claim or cause)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))),(13 (Recovery of money/property - 548 fraudulent transfer)) (Forsley, Alan) **WARNING: See docket entry # [2] for corrective action; Attorney to file a conformed copy of state court complaint; Modified on 9/16/2019 (Evangelista, Maria).**

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 10-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Inc., a California

Represented By
Alan W Forsley

Bonert Management Company, Inc.

Represented By
Alan W Forsley

Bonert's Jadasaha, LLC

Represented By
Alan W Forsley

Bonert's MV, LLC

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Bonert's Mibon, LLC

Represented By
Alan W Forsley

3144 Bonert's LLC

Represented By
Alan W Forsley

DOES 1 through 10, inclusive

Represented By
Alan W Forsley

Beefam, LLC

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Capitol Distribution Company, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01405 Capitol Distribution Company, LLC v. Bonert et al

#15.00 Status Hearing

RE: [9] Amended Complaint with proof of service by Scott E Blakeley on behalf of Capitol Distribution Company, LLC against 3144 Bonert's LLC, Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's Inc., a California corporation, Bonert's Jadasaha, LLC, Bonert's MV, LLC, Bonert's Mibon, LLC, DOES 1 through 10, inclusive. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Statement of Account) (Blakeley, Scott)

Docket 9

***** VACATED *** REASON: CONTINUED 12-11-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Inc., a California

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... **Michael Bonert**
3144 Bonert's LLC

Chapter 11

Represented By
Lawrence M Jacobson

DOES 1 through 10, inclusive

Pro Se

Beefam, LLC

Represented By
Lawrence M Jacobson

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Capitol Distribution Company, LLC

Represented By
Sean Lowe
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01406 Stratas Foods LLC v. Bonert et al

#16.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01406. Notice of Removal of Civil Action to United States Bankruptcy Court with proof of service by Michael Bonert, Vivien Bonert. Nature of Suit: (01 (Determination of removed claim or cause)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))),(13 (Recovery of money/property - 548 fraudulent transfer)) (Forsley, Alan) **WARNING: See docket entry # [2] for corrective action; Attorney to file a conformed copy of state court complaint; Modified on 9/16/2019 (Evangelista, Maria).**

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 10-4-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Represented By
Alan W Forsley

Bonert Management Company, Inc.

Represented By
Alan W Forsley

Bonert's Jadasaha, LLC

Represented By
Alan W Forsley

Bonert's MV, LLC

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Bonert's Mibon, LLC

Represented By
Alan W Forsley

Beefam, LLC

Represented By
Alan W Forsley

3144 Bonert's LLC

Pro Se

DOES 1 through 10, inclusive

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Stratas Foods LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01406 Stratas Foods LLC v. Bonert et al

#17.00 Status Hearing

RE: [9] Amended Complaint with proof of service by Scott E Blakeley on behalf of Stratas Foods LLC against 3144 Bonert's LLC, Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's Incorporated dba Bonert's Slice of Pie, Bonert's Jadasaha, LLC, Bonert's MV, LLC, Bonert's Mibon, LLC, DOES 1 through 10, inclusive. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Statement of Account) (Blakeley, Scott)

Docket 9

***** VACATED *** REASON: CONTINUED 12-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Beefam, LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

DOES 1 through 10, inclusive

Pro Se

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Stratas Foods LLC

Represented By
Sean Lowe
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 1

***** VACATED *** REASON: FIRST AMENDED COMPLAINT FILED
ON 1-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson	Pro Se
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Defendant(s):

Anne Lan Peterson	Pro Se
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Plaintiff(s):

Ronald Peterson	Pro Se
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Trustee(s):

Brad D Krasnoff (TR)	Represented By Eric P Israel Zev Shechtman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#101.00 Pre-Trial Conference RE: [10] Amended Complaint Plaintiff's First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) To Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6), with Proof of Service by David Brian Lally on behalf of Ronald Peterson against Anne Lan Peterson. (RE: related document(s)1 Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 0

***** VACATED *** REASON: DISMISSED 4-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Pro Se

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#102.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-12-19; 6-11-19; 8-14-19; 10-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 12-17-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se
Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his	Represented By Thomas J Eastmond
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Trustee(s):

John J Menchaca (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01019 Timothy J. Yoo, Chapter 7 Trustee v. IDrive Interactive, LLC

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01019. Complaint by Timothy J. Yoo, Chapter 7 Trustee against IDrive Interactive, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IDrive Interactive, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01020 Timothy J. Yoo, Chapter 7 Trustee v. Texas Email Company, LLC

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01020. Complaint by Timothy J. Yoo, Chapter 7 Trustee against Texas Email Company, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 6-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

Texas Email Company, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:17-19286 Carnaval de Autos

Chapter 7

Adv#: 2:18-01455 Goodrich v. Premier Auto Credit, a California corporation et a

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01455. Complaint by David M Goodrich against Premier Auto Credit, a California corporation. (Charge To Estate).
(Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Nachimson, Benjamin)

Docket 1

***** VACATED *** REASON: DISMISSED 9/27/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carnaval de Autos

Represented By
Eric Bensamochan

Defendant(s):

Premier Auto Credit, a California

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

David M Goodrich

Represented By
Benjamin Nachimson

Trustee(s):

David M Goodrich (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#106.00 Pre-Trial Conference
RE: [25] Counterclaim by Carolyn A Dye, Chapter 7 Trustee on behalf of the
bankruptcy estate of Fatemah V Mahdavi against James De Arruda

Docket 25

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#107.00 Pre-Trial Conference RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission 4) Quiet Title by Peter W Lianides on behalf of James De Arruda against Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi.

fr: 8-13-19

Docket 0

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:18-20374 Jenny Melendez

Chapter 7

Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#108.00 Hearing
RE: [80] Defendants' Motion for Judgment on the Pleadings

Docket 80

***** VACATED *** REASON: RESCHEDULED 11-13-2019 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jenny Melendez Pro Se

Defendant(s):

Jenny Melendez, an individual Represented By
M. Jonathan Hayes

Clara E Melendez, an individual Represented By
M. Jonathan Hayes

DOES 1-20 Represented By
M. Jonathan Hayes

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR) Represented By
Zi Chao Lin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#109.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 3-12-19

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 4-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 12, 2019

Hearing Room 1568

11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 1-15-19

Docket 1

***** VACATED *** REASON: DISMISSED 7/24/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#1.00 HearingRE: [231] Motion to Approve Compromise Under Rule 9019 Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Remaining Defendants Declaration of Rosendo Gonzalez in Support Thereof (Krieger, Jeffrey)

Docket 231

Tentative Ruling:

11/12/2019

For the reasons set forth below, the Settlement Motion is GRANTED, and the Proposed Settlement is APPROVED.

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Remaining Defendants [Doc. No. 231] (the "Motion")
2. Notice of Chapter 7 Trustee's Motion for Order Approving Proposed Compromise and Settlement Agreement Between the Trustee and the Remaining Defendants [Doc. No. 232]
3. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") filed a voluntary chapter 11 petition on March 6, 2017 (the "Petition Date"). On May 25, 2017, the Court entered an order converting the case to a case under chapter 7 [Doc. No. 61]. Shortly thereafter, the UST appointed Rosendo Gonzalez to serve as the chapter 7 trustee (the "Trustee") and he continues to act in that capacity.

On March 5, 2019, the Trustee initiated an adversary proceeding against, among other defendants, TCG Assets, Inc. ("TCG Assets"), TCG International Holdings ("TCG International"), Michael B. Citron ("Citron"), Kenneth Morris ("Morris"), the Law Office of Kenneth R. Morris, LLC ("Morris Law Office"), and Nicholas Moffatt

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Green Jane Inc

Chapter 7

("Moffatt") (collectively, the "Remaining Defendants") by filing a complaint to avoid and recover alleged fraudulent transfers pursuant to §§ 542, 544, 548, 550 (the "Complaint"). *See Gonzalez v. TCG Assets, Inc. et al*, Adv. Case. No. 2:19-ap-01061-ER, Doc. No. 1.

As stated in the Complaint, the Trustee alleges that Citron, Debtor's principal, directed the pre-petition transfer of funds in the aggregate amount of \$578,211.24 to the Remaining Defendants, comprising of the following transfers:

- Citron allegedly directed the transfer of a total sum of \$105,500 to TCG Assets from funds held in the bank accounts of Growth Innovations, Debtor's purported alter ego, of which \$100,000 was transferred on June 23, 2015 and \$5,500 on October 28, 2015.
- From April 17, 2015 to April 24, 2015, Citron allegedly directed the transfer of a total sum of \$40,044.24 to various parties on behalf of TCG Assets from funds held in a trust account managed by Morris' attorney.
- From May 8, 2015 to October 1, 2015, Citron allegedly directed the transfer of a total sum of \$79,167 to various parties on behalf of TCG Assets from funds held in the bank accounts of Growth Innovations, Debtor's purported alter ego.
- Citron allegedly directed the transfer of a total sum of \$283,500 to TCG International, which is also allegedly owned by Citron, of which \$25,000 was transferred on January 28, 2015; \$25,000 on February 20, 2015; \$133,500 on April 22, 2015; and \$100,000 on July 15, 2015.
- On October 7, 2015, Citron allegedly directed the transfer of \$5,000 to TCG International from funds held in the bank account of Growth Innovations, Debtor's purported alter ego.
- On May 1, 2015, Citron allegedly directed the transfer of \$65,000 to Moffat from funds held in a trust account managed by Morris' attorney.
- Further, Citron allegedly made a pre-petition transfer of Debtor's funds in the sum of \$30,000 to Ulzheimer and/or the Ulzheimer Group (the "Ulzheimer Defendants").

Complaint, ¶¶ 56-58, 63-64, 66.

The Trustee alleges that each of these transfers is an avoidable fraudulent transfer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Green Jane Inc

Chapter 7

pursuant to §§ 544 and 548. In order to avoid extensive litigation, the Trustee entered into settlement discussions with the Ulzheimer Defendants and counsel for the Remaining Defendants. The Trustee reached a settlement compromise with the Ulzheimer Defendants to resolve the Trustee's claims against the Ulzheimer Defendants, in full, in exchange for their return of the \$30,000 (the "Ulzheimer Settlement"). This Court approved the Ulzheimer Settlement on May 7, 2019 [*See* Doc. Nos. 220, 224].

The Trustee and the Remaining Defendants presently seek approval of a settlement to resolve all claims and dismiss the adversary proceeding as to the Remaining Defendants, in exchange for \$250,000 payable in six installments (the "Proposed Settlement"), \$160,000 of which have since been paid to the Trustee [**Note 1**]. Given that litigation expenses will likely be considerable, the Trustee submits that the Proposed Settlement is reasonable, adequate under the circumstances, and in the best interest of creditors.

As of the date of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. In the Ninth Circuit, courts consider the following factors in determining the fairness, reasonableness and adequacy of a proposed settlement agreement:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986).

"Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT... Green Jane Inc

Chapter 7

(B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Here, the Court finds that the Proposed Settlement is adequate, fair and reasonable, and in the best interest of the estate in accordance with the *A&C Properties* factors. With respect to the first and third factors, the Trustee claims that, although possible, prevailing in the adversary proceeding would result in considerable expense—entailing the collection of evidence of no less than eighteen (18) individual transfers. The Court concurs with the Trustee that the first and third factors favor the approval of the Proposed Settlement. With respect to the issue of collection, the Trustee understands that TCG Assets and TCG International may now be defunct and uninsured as to the disputed claims. In contrast, collecting the Proposed Settlement funds has not been an issue as the Trustee has already received \$160,000 of the settlement payout. Therefore, the second factor weighs in favor of the Proposed Settlement. Finally, as to the fourth factor, approval of the parties' agreement will ensure the estate recovers a significant portion (approximately 43%) of the Trustee's alleged fraudulent transfer claims, thereby avoiding unnecessary costs, delays, and uncertainties attendant with litigation. The Court has not received any objection to the Motion. Accordingly, pursuant to LBR 9013-1(h), the Court presumes all interested parties consent to approval of the Settlement Motion and Proposed Settlement.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED, and the Proposed Settlement is APPROVED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at

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CONT... Green Jane Inc

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213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Given that Moffat purportedly received only \$65,000, the Trustee has determined not to hold him liable for this amount; for this reason, Moffat is not part of the Proposed Settlement.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos
Jeffrey A Krieger

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10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#2.00 Hearing
RE: [12] Motion to Dismiss Adversary Proceeding

Docket 12

***** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 19] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.

Pro Se

Joyce J. Hwang

Represented By
Christian T Kim

Nam Soo Hwang

Represented By
Christian T Kim

DOES 1 through 10

Pro Se

Hee Young Hwang

Represented By
Christian T Kim

Young J. Hwang

Represented By

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CONT... Keystone Textile, Inc.

Chapter 7

Christian T Kim

Young Jae Hwang

Pro Se

Hee Youn Hwang

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01393 Mastan, Chapter 7 Trustee v. Hwang et al

#3.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

Docket 18

***** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 30] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

In Young Hwang

Represented By
Christian T Kim

Twig & Twine, Inc.

Represented By
Michael H Yi

Danielle Steckler

Represented By
Michael H Yi

DOES 1 through 10

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

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CONT... Keystone Textile, Inc.

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Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20111 Jeremy Wyatt LeClair
Adv#: 2:18-01425 Cortes v. LeClair

Chapter 7

#4.00 HearingRE: [45] Motion For Summary Judgment (Weissman, I)

Docket 45

Tentative Ruling:

11/12/2019

For the reasons set forth below, the Motion for Summary Judgment is DENIED WITHOUT PREJUDICE. This action is STAYED pending resolution of the State Court Collateral Attack Action. A Status Conference shall be held on **April 14, 2020, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion for Summary Judgment:
 - a) Notice of Motion and Motion for Summary Judgment [Doc. No. 45]
 - b) Defendant's Response and Opposition to Plaintiff's Motion for Summary Judgment [Doc. No. 51]
 - i) Proof of Service [Doc. No. 52]
 - c) Plaintiff's Reply Memorandum of Points and Authorities in Support of Motion for Summary Judgment [Doc. No. 53]
- 2) Plaintiff's Motion to Stay Proceedings:
 - a) Notice of Motion to Stay Proceedings Pending Outcome of State Court Collateral Attack Action [Doc. No. 47]
 - i) Memorandum of Points and Authorities, Defendant's Declaration, in Support of Defendant's Motion to Stay Proceedings Pending Outcome of State Court Collateral Attack Action [Doc. No. 48]
 - ii) Defendant's Declaration in Support of Motion to Stay Proceedings Pending Outcome of State Court Collateral Attack Action [Doc. No. 49]
 - iii) Proof of Service [Doc. No. 50]
 - b) Plaintiff's Opposition to Defendant's Motion to Stay and Continue Motion for Summary Judgment [Doc. No. 54]

I. Facts and Summary of Pleadings

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CONT... Jeremy Wyatt LeClair

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A. Background

On March 18, 2015, Alvaro Cortes (“Plaintiff”) commenced an action in the Los Angeles Superior Court (the “State Court”) against Jeremy LeClair (the “Defendant”) and other parties (the “State Court Action”) (Case No. BC-575500, filed on March 18, 2015). The State Court Action alleged that Defendant fraudulently offered and sold unqualified, non-exempt securities in the form of operating agreements, bridge loans, and promissory notes. On February 24, 2016, Plaintiff obtained authorization from the State Court to serve Defendant by publication. Plaintiff published the summons in the Los Angeles Daily Journal on March 17, 2016, March 24, 2016, March 31, 2016, and April 7, 2016. On June 21, 2016, Plaintiff obtained entry of default against the Defendant. On March 28, 2017, the State Court entered default judgment against the Defendant in the amount of \$590,908.50 (the “State Court Judgment”).

On June 12, 2018, Defendant filed a voluntary Chapter 7 petition in the Western District of North Carolina (the “North Carolina Bankruptcy Court”). On August 29, 2018, the North Carolina Bankruptcy Court found that the proper venue for Defendant’s case was the Central District of California, Los Angeles Division. The conclusion was based on a finding that the Defendant currently resides in Hacienda Heights, California. *See* Order on Motion to Dismiss and Motion to Transfer Case [Bankr. Doc. No. 1] at ¶¶ 6–7. Defendant’s bankruptcy case was transferred to this court on August 30, 2018.

On November 30, 2018, Plaintiff filed the instant *Complaint to Determine Dischargeability of Debt and for Money Judgment* [Adv. Doc. No. 1] (the “Complaint”). The Complaint alleges that the indebtedness established by the State Court Judgment is excepted from Defendant’s discharge pursuant to § 523(a)(2)(A) and (a)(6). The Complaint further alleges that Defendant’s discharge should be denied, pursuant to § 727(a)(2)(A), because Defendant transferred substantial assets to others for the purpose of hindering, delaying, and defrauding creditors within one year prior to the filing of the petition.

On February 28, 2019, the Court denied Defendant’s motion to dismiss the Complaint. Adv. Doc. Nos. 17 and 19. The Court rejected Defendant’s assertion that the Complaint was not filed within the time period imposed by Bankruptcy Rule 4007. The Court also rejected Defendant’s contention that the Complaint’s allegations under § 523(a)(6) failed to state a claim upon which relief could be granted.

On May 31, 2019, the Court denied Defendant’s motion to set aside the State Court Judgment. Adv. Doc. Nos. 39 and 42. In support of that motion, Defendant argued that the State Court Judgment was void because he had not been personally

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served. The Court rejected Defendant's argument, finding that the *Rooker-Feldman* doctrine prevented the Court from entertaining Defendant's attack upon the validity of the State Court Judgment:

Defendant attacks the validity of the State Court Judgment on various grounds. In so doing, Defendant is effectively asking this Court to review a final determination of the State Court. The *Rooker-Feldman* doctrine prevents this Court from conducting such a review. As stated in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, the *Rooker-Feldman* doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] court proceedings commenced and inviting [federal] court review and rejection of those judgments." 544 U.S. 280, 284 (2005).

The Supreme Court has explained:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy."

Butner v. United States, 440 U.S. 48, 55 (1979).

The State Court Judgment is a property interest which was created and defined by California state law. As long as the State Court Judgment remains valid and enforceable by the courts of the state of California, it is sufficient to establish indebtedness for non-dischargeability purposes. To hold otherwise would not only violate the *Rooker-Feldman* doctrine, but would create the uncertainty and forum-shopping that the Supreme Court warned against in *Butner*. If Defendant wishes to attack the validity of the State Court Judgment, he must do so before the State Court.

The Court's denial of the Motion is consistent with Ninth Circuit precedent. In *MacKay v. Pfeil*, 827 F.2d 540 (9th Cir.1987), MacKay filed an action in federal district court, alleging that a judgment entered by an Alaska

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state court was void because the court lacked personal jurisdiction. MacKay sought from federal court a declaration that the judgment entered by the state court was void. The *MacKay* court held that the jurisdictional attack upon the state court's judgment was barred by the *Rooker-Feldman* doctrine. *MacKay*, 827 F.2d at

Like the defendant in *MacKay*, the Defendant here mounts a jurisdictional attack upon a judgment entered by a state court. Just as defendant's jurisdictional attack was barred in *MacKay*, it is barred here.

Final Ruling Denying Motion to Set Aside State Court Judgment [Adv. Doc. No. 39] at 3–5.

On October 8, 2019, Defendant filed a *Complaint for Independent Action in Equity to Set Aside and Vacate Default and Default Judgment for Lack of Personal Jurisdiction* in the State Court (the action commenced by the filing of such complaint, the "State Court Collateral Attack Action"). The State Court Collateral Attack Action seeks to vacate the State Court Judgment for lack of personal jurisdiction, and alleges that service of the State Court Complaint was defective. [Note 1] On November 1, 2019, the State Court set an Order to Show Cause Hearing for January 21, 2020, based on Defendant's failure to file a proof of service of the complaint that commenced the State Court Collateral Attack Action.

B. Summary of Papers Filed in Connection with Defendant's Motion to Stay the Complaint

Defendant moves to stay the proceedings in this action pending the outcome of the State Court Collateral Attack Action. Defendant explains that he commenced the State Court Collateral Action after the Bankruptcy Court declined to entertain Defendant's jurisdictional attack upon the State Court Action. Defendant asserts that it is appropriate to stay this action until it has been determined whether the State Court Judgment, which established the indebtedness alleged to be non-dischargeable in this action, is vacated for lack of personal jurisdiction.

Plaintiff opposes Defendant's motion to stay the proceedings. Plaintiff asserts that the motion is procedurally improper, and points out that in the State Court Collateral Attack Action, Plaintiff has not yet filed a motion to set aside the default that was entered in the State Court Action. Plaintiff further argues that the motion is untimely, having been filed only after Plaintiff moved for summary judgment.

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C. Summary of Papers Filed in Connection with Plaintiff's Motion for Summary

Judgment

Plaintiff moves for summary judgment on his claim for relief under § 523(a)(6). Plaintiff argues that Defendant is precluded from contesting his liability under § 523(a)(6), because the issues litigated in the State Court Action are identical to the issues arising in this action. Plaintiff emphasizes that in the State Court Action, Defendant was found liable for fraudulently selling bogus insurance and securities.

Defendant opposes the Motion for Summary Judgment. First, Defendant argues that collateral estoppel cannot apply, because the State Court Action was not actually litigated. In support of this argument, Defendant reiterates his contention that service in the State Court Action was defective. In addition, Defendant states that he did not become aware of the State Court Action until after judgment had been entered, and therefore lacked an opportunity to litigate. Second, Defendant argues that the State Court Judgment is not final, given the pending State Court Collateral Attack Action. Finally, Defendant asserts that the issues in the State Court Action are not identical to the issues in this dischargeability action.

In Reply to Defendant's Opposition, Plaintiff contends that the Court should disregard the Opposition because it was filed three days late. Plaintiff disputes Defendant's contention that the State Court Judgment was void for lack of jurisdiction. Plaintiff emphasizes that the State Court Judgment remains in effect and has not been set aside. Plaintiff argues that Defendant's State Court Collateral Attack Action cannot succeed, because a judgment cannot be set aside on collateral attack unless it is void on its face.

II. Findings and Conclusions

A. The Motion for Summary Judgment is Denied without Prejudice.

At the outset, the Court declines Plaintiff's request to disregard Defendant's Opposition, merely because the Opposition was filed three days late. The untimely filing of the Opposition did not unduly prejudice Plaintiff, who filed a Reply contesting the arguments set forth in the Opposition.

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute

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about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

- 1) The issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- 2) The issue was actually litigated in the former proceeding;
- 3) The issue was necessarily decided in the former proceeding;
- 4) The decision in the former proceeding is final and on the merits; and
- 5) The party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

At this juncture, the Court cannot find that the State Court Judgment is entitled to preclusive effect. Plaintiff has not shown that the State Court Action was actually litigated. It is true that the "mere fact that a plaintiff 'obtained a judgment by default does not, in itself, foreclose the possibility that the resolution of some issues in the

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litigation would later have preclusive effect.'" *Baldwin v. Kilpatrick (In re Baldwin)*, 249 F.3d 912, 918 (9th Cir. 2001) (internal citations omitted). However, collateral estoppel "may be applied only if the defendant in the prior action 'ha[d] been personally served with [a] summons or ha[d] actual knowledge of the existence of the litigation.'" *Id.* (internal citations omitted).

Here, there is no dispute that Defendant was *not* personally served with the Summons and Complaint in the State Court Action; instead, as Plaintiff acknowledges, service was by publication. In addition, Defendant testifies that he was not aware of the State Court Action until after judgment was entered. *See* Defendant's Declaration in Support of Motion to Stay Proceedings [Doc. No. 49] at ¶ 3. Defendant's testimony is sufficient to create a genuine dispute as to the issue of whether Defendant had actual knowledge of the existence of the State Court Action. To prevail upon the actual litigation element, Plaintiff must establish that Defendant was aware of the State Court Action. The disputed factual issue of Defendant's awareness cannot be resolved at the summary judgment phase. However, this issue may be ruled upon by the State Court in the context of the Defendant's State Court Collateral Attack Action; at which point the summary judgment motion may be refiled. Therefore, denial is without prejudice.

B. The Motion to Stay is Granted

The Court finds it appropriate to stay this action pending the outcome of Defendant's State Court Collateral Attack Action. If Defendant prevails in the State Court Collateral Attack Action, the State Court Judgment which establishes the indebtedness that is alleged to be non-dischargeable will no longer be valid. An invalidation of the underlying State Court Judgment would significantly affect the course of this litigation.

The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 41] entered on May 31, 2019, are VACATED. This action is STAYED pending resolution of the State Court Collateral Attack Action. A Status Conference shall be held on **April 14, 2020, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the State Court Collateral Attack Action, shall be submitted by no later than fourteen days prior to the hearing.

III. Conclusion

Based upon the foregoing, the Motion for Summary Judgment is DENIED. This action is STAYED pending resolution of the State Court Collateral Attack Action. A

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Status Conference shall be held on **April 14, 2020, at 10:00 a.m.**

The Court will prepare and enter orders denying the Motion for Summary Judgment, staying this action, and setting the April 14, 2020 Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The record of the State Court Collateral Attack Action has not been provided to this Court. Pursuant to Evidence Rule 201, the Court takes judicial notice of the documents filed in the State Court Collateral Attack Action.

Party Information

Debtor(s):

Jeremy Wyatt LeClair	Pro Se
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Defendant(s):

Jeremy Wyatt LeClair	Pro Se
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Plaintiff(s):

Alvaro Cortes	Represented By I Donald Weissman
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Trustee(s):

Sam S Leslie (TR)	Pro Se
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2:18-20374 Jenny Melendez

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Adv#: 2:18-01429 Wesley H. Avery, Chapter 7 Trustee of the Bankrupt v. Jenny Melendez, an

#5.00 Hearing
RE: [80] Defendants' Motion for Judgment on the Pleadings

FR. 11-12-19

Docket 80

Tentative Ruling:

11/12/2019

For the reasons set forth below, the Court will enter judgment on the pleadings in Defendants' favor.

Pleadings Filed and Reviewed:

- 1) Trustee's First Amended Complaint [Doc. No. 36] (the "Complaint")
- 2) Notice of Motion and Motion for Judgment on the Pleadings [Doc. No. 80] (the "Motion")
 - a) Amended Notice of Hearing on Defendants' Motion for Judgment on the Pleadings [Doc. No. 83]
- 3) Trustee's Opposition to Defendants Jenny Melendez's and Clara Melendez's Motion for Judgment on the Pleadings [Doc. No. 84] (the "Opposition")
 - a) Chapter 7 Trustee's Request for Judicial Notice in Support of Opposition to Motion for Judgment on the Pleadings [Doc. No. 85]
- 4) Defendants' Reply to Trustee's Opposition to Defendants' Motion for Judgment on the Pleadings

I. Facts and Summary of Pleadings

On September 5, 2018, Jenny Melendez ("Jenny") filed a voluntary Chapter 7 petition. [Note 1] On January 2, 2019, Jenny received a discharge.

On April 18, 2019, the Chapter 7 Trustee (the "Trustee") filed a *First Amended Complaint* [Doc. 36] (the "Complaint") against Jenny and Clara E. Melendez ("Clara," and together with Jenny, the "Defendants"). The Complaint seeks the following relief:

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- 1) A judgment that properties commonly known as 1225 West 123rd Street, Los Angeles, CA 90044 (the “LA Property”) and 1102 South Temple Avenue, Compton, CA 90221 (the “Compton Property,” and together with the LA Property, the “Properties”) are property of the estate;
- 2) Turnover and sale of the Properties;
- 3) An injunction barring the Defendants from (a) recording liens against the Properties, (b) committing acts of waste against the Properties, and/or (c) interfering with the Trustee’s operation and sale of the Properties; and
- 4) Revocation of Jenny’s discharge for allegedly concealing her interest in the Compton Property.

A. Summary of the Complaint’s Allegations

The material allegations of the Complaint are as follows:

Allegations Regarding the LA Property

In May 2004, Jenny and her former husband, Elmer Rivas (“Rivas”) purchased the LA Property. Complaint at ¶ 10. Notwithstanding language in the conveying instruments providing that Jenny and Rivas took the LA Property as “husband and wife as joint tenants,” the LA Property was in fact community property because it was purchased with community funds. *Id.*

On February 5, 2008, Jenny and Rivas recorded a grant deed, purporting to convey title to the LA Property to “Elmer Rivas and Jenny Melendez, Husband and Wife and Clara E. Melendez, a Single Woman, all as Joint Tenants.” *Id.* at ¶ 11. The grant deed stated that the conveyance was a bona fide gift for which the grantors received nothing in return. As a result of the grant deed, Rivas, Jenny, and Clara each held 33.3% of the legal title to the LA Property. *Id.* Jenny did not receive reasonably equivalent value in exchange for the transfer. *Id.*

On April 8, 2008, the Los Angeles Superior Court entered a judgment dissolving Jenny and Rivas’ marriage and dividing their community property (the “Divorce Judgment”). *Id.* at ¶ 12. The Divorce Judgment ordered Rivas to cause title to his interest in the LA Property to be placed in Jenny’s name alone.

By a grant deed recorded on May 1, 2008, “Elmer Rivas and Jenny Melendez, Husband and Wife and Clara E. Melendez, a Single Woman, All as Joint Tenants” purported to grant title to the LA Property to “Jenny Melendez, an Unmarried Woman and Clara E. Melendez, a Single Woman, as Joint Tenants.” *Id.* at ¶ 13. The grant

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deed stated that the conveyance was a bona fide gift for which the grantors received nothing in return. *Id.* The effect of the grant deed was to convey Rivas' 33.3% interest in the LA Property to Jenny, resulting in Jenny holding 66.67% of the legal title to the Property and Clara holding the remaining 33.33% of the legal title to the Property. *Id.*

Jenny holds 100% of the beneficial and equitable title to the LA Property. *Id.* at ¶ 16. Jenny pays the entire monthly mortgage on the LA Property. *Id.* In her 2017 federal tax return, Jenny stated that she paid \$11,783 in home mortgage interest. *Id.* Jenny also pays for the utilities on the LA Property. *Id.* Jenny has continuously controlled the LA Property since she obtained it as community property in May 2004. *Id.*

The only outstanding lien encumbering the LA Property is a Deed of Trust in favor of Wells Fargo Bank, N.A., in the amount of \$270,400 (the "Wells Fargo DOT"). *Id.* at ¶ 14. The Trustee is not seeking to avoid the Wells Fargo DOT. There is equity in the LA Property that can be administered for the benefit of Jenny's creditors. *Id.* at ¶ 15.

Allegations Regarding the Compton Property

In March 2001, Jenny and Rivas purchased the Compton Property using community funds. *Id.* at ¶ 17. In September 2001, Jenny and Rivas transferred the Compton Property to Jenny's parents, Clara and Gerardo Melendez, by quitclaim deed. *Id.* at ¶ 18. The quitclaim deed stated that the transfer was a bona fide gift for which the grantors received nothing in return. *Id.* Jenny did not receive reasonably equivalent value in exchange for the transfer. *Id.*

In November 2003, a grant deed was recorded transferring the Compton Property from "Clara E. Melendez and Gerardo E. Melendez" to "Gerardo E. Melendez and Clara E. Melendez, Husband and Wife as Joint Tenants." *Id.* at ¶ 21. As a result of Gerardo E. Melendez's death in December 2016, 100% of the bare legal title to the Compton Property was transferred by operation of law to Clara Melendez. *Id.* at ¶ 22.

Clara does not live at the Compton Property. *Id.* at ¶ 24. Clara lives with Jenny at the LA Property. *Id.* According to Jenny's testimony at the meeting of creditors, the Compton Property is a duplex, with one unit being occupied by Jenny's brother and the other unit being leased to a third party. *Id.* Jenny also testified at the meeting of creditors that her brother collects all the rental income from the Compton Property and that she does not receive any of the rental income. *Id.*

The only outstanding lien encumbering the Compton Property is a Deed of Trust in favor of PHH Mortgage Corp., fka Cendant Mortgage Corp., in the amount of

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\$270,000 (the "PHH Deed of Trust"). *Id.* at ¶ 23. The Trustee is not seeking to avoid the PHH Deed of Trust.

Jenny did not schedule the Compton Property. *Id.* at ¶ 24. Jenny falsely testified at the meeting of creditors that she never had an interest in the Compton Property. *Id.*

Claims for Relief

Based upon the foregoing allegations, the Trustee asserts the following claims for relief:

- 1) A declaratory judgment that the Trustee, on behalf of the estate, holds 100% of the beneficial and equitable title to the LA Property, and that the LA Property is property of the estate pursuant to § 541(a)(1). *Id.* at ¶¶ 25–27.
- 2) A declaratory judgment that the Trustee, on behalf of the estate, holds 100% of the legal and equitable title to the Compton Property, and that the Compton Property is property of the estate pursuant to § 541(a)(1). *Id.* at ¶¶ 28–30.
- 3) Turnover of the Properties pursuant to § 542, and recovery of the Properties, or the value thereof, pursuant to § 550(a)(1). *Id.* at ¶¶ 31–38.
- 4) An injunction, pursuant to § 105(a), barring Jenny and Clara from (a) recording liens against the Properties, (b) committing acts of waste against the Properties, and/or (c) interfering with the Trustee's operation and sale of the Properties. *Id.* at ¶¶ 39–42.
- 5) Sale of the Properties, free and clear of Clara's interest, pursuant to § 363(h). *Id.* at ¶¶ 43–56.
- 6) Revocation of Jenny's discharge, pursuant to § 727(d)(1), based upon Jenny's failure to disclose her interest in the Compton Property. *Id.* at ¶¶ 57–58.

B. Summary of Defendants' Motion for Judgment on the Pleadings

Defendants move for judgment on the pleadings, pursuant to Civil Rule 12(c). Defendants make the following arguments in support of the Motion:

The Complaint's factual allegations do not support the Trustee's contention that the Properties are property of the estate in their entirety.

LA Property

The Trustee is correct that Jenny holds 66.6% of the legal title to the LA Property. The only fact that the Trustee offers in support of his contention that the estate holds a

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100% beneficial interest in the LA Property is that in 2008—more than ten years prior to the Petition Date—Jenny’s former husband transferred his interest in the property to Jenny and Clara. The 2008 transfer does not provide the estate with a 100% beneficial interest in the LA Property.

Compton Property

The Compton Property is Clara’s home. In March 2001, Jenny’s parents—Clara and Gerardo Melendez—purchased the Compton Property. Because Clara and Gerardo could not obtain financing to purchase the Compton Property, Jenny and Rivas obtained a loan, using a down payment from Clara and Gerardo, and took title to the Compton Property. Jenny and Rivas then quitclaimed the Compton Property to Clara and Gerardo in September 2001.

The only fact that supports the Trustee’s contention that the estate holds a 100% beneficial interest in the Compton Property is the 2001 quitclaim deed. This 17-year old transfer does not show that the Compton Property is property of the estate.

Claim for Revocation of Jenny’s Discharge

The Trustee’s claim for revocation of Jenny’s discharge is based on the allegation that Jenny failed to disclose her interest in the Compton Property. If the Court agrees that the Complaint fails to allege facts showing that Jenny had an interest in the Compton Property in 2019, there can be no basis to revoke Jenny’s discharge.

C. Summary of the Trustee’s Opposition

The Trustee makes the following arguments in Opposition to the Motion:

The Trustee has pleaded sufficient facts in support of his claims. With respect to the LA Property, the Trustee has alleged that Jenny paid the mortgages and utilities on the Property. With respect to the Compton Property, the Trustee has alleged that at the meeting of creditors, Jenny falsely testified that she had never had an interest in the Compton Property; in fact, Jenny held an interest in the Compton Property in 2001.

The Trustee has sufficiently pleaded his claim for revocation of Jenny’s discharge. The claim is based upon Jenny’s false statement that she never had an interest in the Compton Property. In support of a prior motion to vacate the entry of default, Jenny acknowledged that she had an interest in the Compton Property in 2001.

D. Summary of Defendants’ Reply

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Defendants make the following arguments in Reply to the Opposition:

The only argument that the Trustee makes in support of his contention that the LA Property is property of the estate in its entirety is that Jenny makes the mortgage payments for the Property, claims a tax deduction for mortgage interest expense, and pays utilities for the Property. None of these allegations support the Trustee's contention that Clara's 33.3% interest in the LA Property is property of the estate.

The only argument the Trustee makes in support of his contention that the Compton Property is property of the estate in its entirety is that Clara, who holds 100% of the legal title to the Compton Property, does not live at the Compton Property. This allegation is insufficient to support the Trustee's claim that the Compton Property is property of the estate.

II. Findings and Conclusions

Civil Rule 12(c) is functionally identical to Rule 12(b)(6), and the same standard of review applies to motions brought under either rule. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n. 4 (9th Cir. 2011).

To survive a motion to dismiss brought under Civil Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

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Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces “does not require ‘detailed factual allegations,’ ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

The Court finds that Defendants are entitled to judgment on the pleadings in their favor because the Complaint fails to state any claims upon which relief can be granted.

A. The Complaint Fails to State a Claim for a Declaration that the Estate Holds a 100% Beneficial Interest in the LA Property

The Complaint fails to allege specific facts plausibly supporting a reasonable inference that the estate holds a 100% beneficial interest in the LA Property. The Complaint alleges that Jenny failed to receive reasonably equivalent value in connection with a transfer of the LA Property that occurred in 2008. The Complaint does not, and could not, seek to avoid the 2008 transfer under §§ 544, or 548, as the statute of limitations under these sections has long since expired.

In support of his theory that the estate holds a 100% beneficial interest in the LA Property, the Trustee alleges only that Jenny pays the LA Property’s mortgage and utilities, and has continuously controlled the LA Property since acquiring it in 2004.

Cal. Evid. Code § 662 provides: “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.”

Under Cal. Evid. Code § 662, Clara’s 33.3% interest in the LA Property’s legal title gives rise to the presumption that Clara holds a 33.3% beneficial interest in the LA Property. The allegation that Jenny pays all mortgage and utility expenses for the LA Property does not constitute clear and convincing proof sufficient to rebut Clara’s presumed 33.3% beneficial interest. It is possible for Clara to retain a beneficial interest in the LA Property even though Jenny pays all the expenses. For example, under California law, “where the grantee of property is the child or other natural object of the affections of the grantor, a presumption arises of a gift or advancement.” *Lloyds Bank California v. Wells Fargo Bank*, 187 Cal. App. 3d 1038, 1043, 232 Cal. Rptr. 339, 341 (Ct. App. 1986). Here, the Complaint alleges that in 2008, Jenny and her former husband transferred title to the LA Property to Jenny and her mother,

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Clara. The most plausible inference arising from this allegation is not that Jenny holds a 100% beneficial interest in the LA Property, but rather that through the 2008 transfer, Jenny intended to gift to Clara a 33.3% beneficial interest in the LA Property. Given that clear and convincing evidence is required to defeat the presumption that record title is consistent with beneficial title, the Trustee has not alleged facts sufficient to defeat the presumption that Clara holds a beneficial interest in the LA Property consistent with her record title interest.

B. The Complaint Fails to State a Claim for a Declaration that the Estate Holds a 100% Beneficial Interest in the Compton Property

The Complaint fails to allege specific facts plausibly supporting a reasonable inference that the estate holds a 100% beneficial interest in the Compton. The Complaint alleges that Jenny failed to receive reasonably equivalent value in connection with the 2001 transfer of the Property to Clara and Gerardo Melendez. The Complaint does not seek to avoid the 2001 transfer under §§ 544 or 548. The Complaint does not, and could not, seek to avoid the 2008 transfer under §§ 544, or 548, as the statute of limitations under these sections has long since expired.

In support of his theory that the estate holds a 100% beneficial interest in the Compton Property, the Trustee alleges only that Clara does not live at the Compton Property, and that Jenny falsely testified at the meeting of creditors that she had never had an interest in the Compton Property, when in fact Jenny had held an interest in the Compton Property in 2001.

The Complaint alleges that Clara holds a 100% record title interest in the Compton Property. Under Cal. Evid. Code § 662, Clara's 100% record title interest creates a presumption that Clara holds a 100% beneficial interest in that Property.

The Trustee has not alleged facts sufficient to defeat the presumption arising under Cal. Evid. Code § 662. The Trustee's allegation that Clara does not live at the Compton Property does not plausibly support a reasonable inference that Clara lacks a beneficial interest in that Property. It is common for owners of Property to reside elsewhere, particularly where, as here, the Property is being rented out.

The allegation that Jenny failed to disclose her prior interest in the Compton Property likewise fails to defeat the presumption of Clara's beneficial interest. The meeting of creditors occurred in 2018. Jenny allegedly failed to disclose that seventeen years prior to that meeting, she had briefly held an interest in the Compton Property. This alleged non-disclosure does not support the Trustee's theory that the Compton Property is property of the estate.

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C. The Complaint Fails to State a Claim for Turnover and Sale of the Properties

The Trustee's claims for turnover and sale of the Properties depend upon his claims for declarations that the Properties are property of the estate. The failure of the claims for declaratory relief forecloses the claims for turnover and sale.

D. The Complaint Fails to State a Claim for Revocation of Jenny's Discharge

Section 727(d)(1) provides that upon the request of the Trustee, the Court "shall revoke a discharge ... if such discharge was obtained through the fraud of the debtor, and the [Trustee] did not know of such fraud until after the granting of such discharge."

Revocation of a debtor's discharge "is an extraordinary remedy." *Tighe v. Valencia (In re Guadarrama)*, 284 B.R. 463, 469 (C.D. Cal. 2002). Section 727(d)(1) "is construed liberally in favor of the debtor and strictly against those objecting to discharge." *Id.*

The Complaint alleges that Jenny did not schedule the Compton Property, and that she falsely testified at the meeting of creditors that she never had an interest in the Compton Property. *Id.*

The Complaint's factual allegations fail to plausibly support the Trustee's claim that Jenny holds a beneficial interest in the Compton Property. Since it is undisputed that Jenny does not hold legal title to the Compton Property, Jenny was not required to schedule the Compton Property. Therefore, the failure to schedule the Compton Property was not fraudulent and cannot form the basis of a claim for revocation of Jenny's discharge.

The allegation that Jenny falsely stated at the meeting of creditors that she had never held an interest in the Compton Property is not sufficient to state a claim for revocation of Jenny's discharge. To state a claim for revocation of discharge based upon a false statement, the Trustee must allege that the false statement "concerned a material fact." *Guadarrama*, 284 B.R. 463, 471 (C.D. Cal. 2002). It is not material that Jenny briefly held an interest in the Compton Property nearly seventeen years prior to the Petition Date.

E. The Trustee's Request for Leave to Amend is Denied

The Trustee has already amended the Complaint once. If the Trustee possessed any facts in support of his claims, he could have, and should have, alleged such facts by now. The Trustee's request for leave to amend is denied as futile. *See Reddy v.*

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Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990) (holding that a request for leave to amend may be denied where amendment would be futile).

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. The Court will enter judgment on the pleadings in Defendants' favor. Within seven days of the hearing, Defendants shall submit (1) a proposed order granting the motion and (2) a proposed judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A given name is used to distinguish Jenny Melendez from her mother, Clara E. Melendez, who is also involved in this litigation. No disrespect is intended.

Party Information

Debtor(s):

Jenny Melendez

Pro Se

Defendant(s):

Jenny Melendez, an individual

Represented By
M. Jonathan Hayes

Clara E Melendez, an individual

Represented By
M. Jonathan Hayes

DOES 1-20

Represented By
M. Jonathan Hayes

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Chapter 7

Plaintiff(s):

Wesley H. Avery, Chapter 7 Trustee

Represented By
Adjoa Anim-Appiah
Zi Chao Lin

Trustee(s):

Wesley H Avery (TR)

Represented By
Zi Chao Lin

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10:00 AM

2:19-14029 Oran Kemp, Jr.

Chapter 7

Adv#: 2:19-01223 Clady v. Kemp, Jr.

#6.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding

fr. 10-15-19

Docket 9

***** VACATED *** REASON: PER ORDER ENTERED 11-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oran Kemp Jr.

Represented By
Sean S Vahdat

Defendant(s):

Oran Kemp Jr.

Represented By
Baruch C Cohen

Plaintiff(s):

Ryan Clady

Represented By
Eliza Ghanooni

Trustee(s):

John J Menchaca (TR)

Pro Se

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2:19-14029 Oran Kemp, Jr.

Chapter 7

Adv#: 2:19-01223 Clady v. Kemp, Jr.

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01223. Complaint by Ryan Clady against Oran Kemp Jr.. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Ghanooni, Eliza)

fr. 10-15-19

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oran Kemp Jr.

Represented By
Sean S Vahdat

Defendant(s):

Oran Kemp Jr.

Pro Se

Plaintiff(s):

Ryan Clady

Represented By
Eliza Ghanooni

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:14-25758 Wesley Brian Ferris

Chapter 11

#8.00 Post-Confirmation Status Conference re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16; 4-11-17; 7-11-17; 12-19-17; 5-16-18; 10-16-18; 3-13-19; 7-17-19

Docket 109

Tentative Ruling:

11/12/2019: Appearances required.

This is a post-confirmation status conference. On June 3, 2019, Wesley Brian Ferris (the "Debtor") submitted his "Sixth Post-Confirmation Status Report" (the "6th Status Report") [Doc. No. 244]. In that report, the Debtor reported having issues implementing stipulated loan modifications concerning the real properties located at 444 N. Myrtle Avenue, Monrovia, CA and 443 East Greystone Avenue, Monrovia, CA. Debtor also averred that he would be objecting to a notice of breach of the confirmed plan filed by Creditor Bayview Loan Servicing, LLC [Doc. No. 241]. The 6th Status Report further stated that Debtor was "very close" to consummating his confirmed plan.

On October 31, 2019, Debtor filed his "Seventh Post-Confirmation Status Report" (the "7th Status Report") [Doc. No. 250]. Based upon this Court's review, the 7th Status Report appears to be nearly identical to the 6th Status Report. The 7th Status Report fails to provide any clarifying detail on Debtor's efforts to resolve the implementation issues since the filing of 6th Status Report nearly four months ago. The Debtor has also not submitted additional information on his tentative plans to sell the real estate parcel located at 515 North Alta Vista Avenue, Monrovia, CA 91016.

Based on the foregoing, counsel for the Debtor is directed to appear to provide the Court with an update on those issues referenced above.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By

**United States Bankruptcy Court
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Wesley Brian Ferris

Diane C Weil

Chapter 11

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1857

*** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

**United States Bankruptcy Court
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Verity Health System of California, Inc.

Latonia Williams

Susan I Montgomery

Chapter 11

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 0

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1849] Cure Objection Asserted by **Roche Diagnostics Corporation**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1849

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 2144

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

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CONT... Verity Health System of California, Inc.

Chapter 11

Bryan L Ngo
Susan I Montgomery

AppleCare Medical Group St.

Represented By
Susan I Montgomery

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1882

*** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1930

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1949

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1965

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1954

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1850

*** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1940

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [1866] Cure Objection Asserted by **Kaiser Foundation Hospitals**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1866

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1890

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Brian L Davidoff

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1873

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Robert A Rich

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1863

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19; 10-23-19;
10-30-19; 11-6-19

Docket 0

***** VACATED *** REASON: CONTINUED 11-20-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Court has entered an order approving a stipulated continuance of this hearing to November 20, 2019, at 10:00 a.m.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 HearingRE: [3572] Stipulation By Verity Health System of California, Inc. and the California Attorney General Resolving "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief"

Docket 3572

Tentative Ruling:

11/12/2019:

The Court has reviewed the proposed form of order negotiated between the Debtors and the Attorney General (the "AG Order") and the proposed form of order submitted by Strategic Global Management, Inc. (the "SGM Order"). The parties should be prepared to address the following questions and concerns of the Court.

1. Absence of Findings and Conclusions Supporting Entry of the Order

The stipulation entered into between the Debtors and the California Attorney General [Doc. No. 3572] (the "Stipulation") provides that the *Memorandum of Decision Granting Debtors' Emergency Motion to Enforce the Sale Order* [Doc. No. 3446] (the "Memorandum of Decision") "is hereby vacated and withdrawn." Stipulation at ¶ 2.

Does the Court have the ability to enter an order that is not supported by findings and conclusions? The Debtors' motion seeking entry of an order enforcing the terms of the Sale Order (the "Sale Enforcement Motion") is a "contested matter" within the meaning of Bankruptcy Rule 9014. Rule 9014 provides that Rule 7052 applies to contested matters. Rule 7052 requires the Court to "find the facts specially and state its conclusions of law separately."

Rule 9014 authorizes the Court to direct that Rule 7052 not apply, which would excuse the Court from issuing findings and conclusions in support of its Order. What are the circumstances in which other courts have issued orders that are not supported by any findings and conclusions?

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Will the absence of findings and conclusions lead to future litigation regarding the meaning and interpretation of the Order?

2. Meaning of Prefatory Phrase “Solely and Exclusively for the purposes of the APA”

Paragraph 3 of the AG Order states:

Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f), and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).

The Court understands the italicized phrase to mean that the AG Order shall have no precedential effect. SGM contends that this prefatory phrase is ambiguous. SGM should be prepared to further explain its position. It is not clear to the Court exactly what is ambiguous about this prefatory phrase.

3. Difference Between the Phrases “Can Be Sold” and “Are Being Transferred”

SGM objects to the AG Order’s use of the phrase “can be sold,” and asserts that the Order should provide instead that the Assets “are being transferred.” SGM should be prepared to explain what additional meaning is conveyed by the phrase “are being transferred” that is not conveyed by the phrase “can be sold.” Within the context of ¶ 3 of the AG Order, the Court is unable to discern a meaningful difference between the two phrases.

Is it of concern to SGM that the phrase “can be sold” is precatory rather than declaratory? If that is the issue, would the Attorney General accept the phrase “are being sold” in lieu of “can be sold”?

4. The State Court’s Jurisdiction to Enforce the Purchaser Approved Conditions

Paragraph 4 of the AG Order provides:

This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

SGM objects to the language authorizing the Attorney General to enforce the Purchaser Approved Conditions in the state courts. SGM fears that the Attorney General will use misdirection to attempt to improperly enforce the Additional Conditions before the state courts. Specifically, SGM postulates that the Attorney General could mislead a state court into believing that the impermissible enforcement of an Additional Condition was instead the permissible enforcement of a Purchaser Approved Condition.

In the Court's view, the situation envisioned by SGM is not likely to occur. Schedule 8.6 to the APA contains 28 pages setting forth the Purchaser Approved Conditions. The exhaustive detail in the APA would make it very difficult for the Attorney General to overstep the bounds of his authority to enforce the Purchaser Approved Conditions.

The Court is also concerned that it may not have authority to retain jurisdiction with respect to the Attorney General's enforcement of the Purchaser Approved Conditions. The facts here are similar to those of *Battle Ground Plaza v. Ray (In re Ray)*, 624 F.3d 1124 (9th Cir. 2010), in which the Bankruptcy Court approved the sale of real property, free and clear of a right of first refusal granted to Battle Ground Plaza (the "Sale Order"). After the bankruptcy case had been closed, Battle Ground Plaza launched a collateral attack on the Sale Order that was based on state law breach of contract claims. The Ninth Circuit found that the bankruptcy court lacked jurisdiction over Battle Ground Plaza's collateral attack on the Sale Order, notwithstanding a provision in the confirmation order stating that the bankruptcy court "shall retain jurisdiction of this case to determine any controversies in connection with assets of the bankruptcy estate." *Id.* at 1136 n.8.

5. What Specific Objections Does the Attorney General Have to the Alternative Language Proposed by SGM in ¶ 2 of the SGM Order?

The Attorney General has rejected the following alternative language proposed by SGM:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 13, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

The Debtors' transfer to SGM of the Debtors' assets (the "SGM Sale") pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the "SGM APA") is free and clear of, and shall not be subject to or conditioned upon SGM's performance of, compliance with, or adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion), pursuant to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), and (f)(5) and otherwise as provided in the Sale Order.

SGM Order at ¶ 2.

The Stipulation provides that the Attorney General will not waive his right to appeal the Memorandum Decision unless the AG Order is entered without modification. The Attorney General should be prepared to discuss the reasons for his objections to the alternative language proposed by SGM.

6. Does the AG Order Satisfy § 8.6 of the SGM APA?

Does SGM take the position that the AG Order does not qualify as a "Supplemental Sale Order" that is final and non-appealable within the meaning of § 8.6 of the SGM APA?

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

11:00 AM

2:19-17841 Soul Hollywood, LLC

Chapter 7

#100.00 HearingRE: [29] Motion For Sale of Property of the Estate under Section 363(b) - No Fee CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) AUTHORIZING SALE OF ESTATE'S RIGHT, TITLE, AND INTEREST IN ALCOHOLIC BEVERAGE CONTROL LICENSE; (2) DETERMINING THAT BUYER IS A GOOD FAITH PURCHASER; (3) APPROVING OVERBID PROCEDURES; (4) WAIVING THE FOURTEEN (14) DAY STAY PRESCRIBED BY RULE 6004(h) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF HOWARD M. EHRENBERG, AND JASON B. KHO (AAA LIQUOR LICENSE CONSULTING) IN SUPPORT THEREOF (Ehrenberg (TR), Howard)

Docket 29

Tentative Ruling:

11/12/2019

For the reasons set forth below, the Sale Motion is GRANTED. The Court will conduct the sale auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Flora LA LLC
- 2) Property for sale: Type 47 General Liquor License #47-558177
- 3) Purchase price: \$90,000.00
- 4) Overbids: The initial overbid shall be \$95,000.00. Subsequent overbids shall be in increments of \$1,000.00.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Estate's Right, Title, and Interest in Alcoholic Beverage Control License; (2) Determining Good Faith Purchaser, (3) Approving Overbid Procedures; (4) and Waiving the Fourteen Day Stay Prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure [Doc. No. 29] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 30]
 - b) Notice of Sale of Estate Property [Doc. No. 32]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 13, 2019

Hearing Room 1568

11:00 AM

CONT... Soul Hollywood, LLC

Chapter 7

2) No opposition to the Sale Motion is on file

I. Facts and Summary of Pleadings

Soul Hollywood, LLC (the "Debtor") commenced a voluntary Chapter 7 petition on July 5, 2019. The Debtor owned and operated a restaurant at the time this petition was filed. One of the assets scheduled by the Debtor is a Type 47 General Liquor License #47-558177 (the "Liquor License"). Howard Ehrenberg, the Chapter 7 trustee (the "Trustee"), presently seeks to sell the Liquor License to Flora LA, LLC for \$90,000 (the "Purchaser"), or its chosen nominee. The Trustee further states that he is not aware of any liens encumbering the Liquor License. The sale is subject to overbids. No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. B.A.P. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale, which will generate receipts of approximately \$90,000 for the benefit of the estate. Therefore, the sale is in accordance with the Trustee's statutory obligation to liquidate the estate's assets.

Good Faith Determination Pursuant to 11 U.S.C. § 363(m)

The Trustee requests that the Purchaser be afforded the protections of § 363(m). Having reviewed the declarations submitted by the Trustee and Jason B. Kho, the broker who marketed the Liquor License, the Court finds that the Purchaser is a good faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the Purchaser and all qualified overbidders. The initial overbid shall be \$95,000.00 with subsequent overbids to be in increments of \$1,000.00. The overbid increment is subject to adjustment by the Court to facilitate

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

11:00 AM

CONT... **Soul Hollywood, LLC**

Chapter 7

bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

The overbidding procedures proposed by the Trustee are approved as set forth below. A winning overbidder (except for the Purchaser) shall provide the Trustee with a \$10,000 deposit (the "Deposit") by way of a cashier's check payable to "Howard M. Ehrenberg, the Chapter 7 Trustee of the Bankruptcy Estate of Soul Hollywood, LLC" at the time of the hearing. The Deposit shall be forfeited if the overbidder is unable to finalize the purchase of the Liquor License within thirty (30) days of entry of an order granting the Sale Motion. If a winning overbidder cannot timely close the purchase of the Liquor License, the Trustee may proceed with the sale to the next highest bidder. In addition, any successful overbidders shall purchase the Liquor License on the same terms and conditions as the Purchaser.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven (7) days of the hearing. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take immediate effect upon entry.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Soul Hollywood, LLC

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 13, 2019

Hearing Room 1568

11:00 AM

CONT... Soul Hollywood, LLC

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-20354 Terrence Devon Pratt

Chapter 7

#1.00 HearingRE: [13] Amended Motion (related document(s): 12 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 subaru WRX, VIN JF1VA1J63H9836426 with proof of service. filed by Creditor SCHOOLSFIRST FEDERAL CREDIT UNION) (Reza, Paul)

Docket 13

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention [Doc. No. 1] in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... Terrence Devon Pratt

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Terrence Devon Pratt

Represented By
Sanaz S Bereliani

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21558 Denise Guzman

Chapter 7

#2.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Kia Optima, VIN: KNAGM4A78F5583917 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... Denise Guzman

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Denise Guzman

Represented By
Sam Benevento

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21710 Saidatul Akmar Samat

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Mercedes-Benz GLE350W4, VIN:4JGDA5HB0JB174783 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention [Doc. No. 1] in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... Saidatul Akmar Samat

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Saidatul Akmar Samat

Represented By
Renee Nasiri

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21737 Antoinette Hill

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 120 E. Kelso Street #2, Inglewood, CA 90301 with Exhibit A through C and Proof of Service of Document.

Docket 8

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on August 23, 2019, with a pending trial date of November 13, 2019. *See* Motion at 8.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT...

Antoinette Hill

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Antoinette Hill

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21075 LGH Digital Media, Inc., dba Larson Studios

Chapter 7

#5.00 Hearing
RE: [11] Stipulation to relief from stay By 6520 Sunset Blvd., LLC and LGH Digital Media, Inc., dba Larson Studios

Docket 11

Tentative Ruling:

11/14/2019

For the reasons set forth below, the Motion is GRANTED, and the Stipulation is APPROVED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion for Approval of Stipulation for Relief from Stay [Doc. No. 9] (the "Motion")
- 2) Stipulation By 6520 Sunset Blvd., LLC and LGH Digital Media, Inc., dba Larson Studios [Doc. No. 11] (the "Stipulation")
- 3) Amended Notice of Motion [Doc. No. 14]
- 4) Notice of Errata [Doc. No. 15]
- 5) Motion to Continue Hearing [Doc. No. 17]
- 6) Opposition to Motion to Continue Hearing [Doc. No. 18]
- 7) Declaration of Randy P. Orlik in Support of Opposition to Creditors Request for a Continuance of Hearing on Motion for Approval of Stipulation for Relief from Stay or for Extension of Time to File Opposition to the Motion [Doc. No. 19]
- 8) Order Denying Continuance Motion [Doc. No. 20]
- 9) No oppositions filed as of the preparation of this tentative ruling

I. Facts and Summary of Pleadings

LGH Digital Media, Inc., dba Larson Studios (the "Debtor") commenced this Chapter 11 case on a voluntary basis on September 18, 2019. The Debtor and a secured creditor, 6520 Sunset Blvd., LLC (the "Lender," collectively with the Debtor, the "Parties"), presently seek court approval of the Stipulation to lift the automatic stay and allow Lender to exercise state law remedies with respect to certain sale proceeds.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... LGH Digital Media, Inc., dba Larson Studios

Chapter 7

The amount owed to Lender arises from a series of loans made by Citizens Business Bank, a California banking corporation ("Citizens") to the Debtor starting in 2007, aggregating to a debt of over \$300,000 as of June 24, 2019. Stipulation, ¶¶ A – H. In addition to this first group of loans, Citizens extended at least three other loans to the Debtor from 2014 to 2017 (the "Loans"). *See id.*, ¶¶ I, N, and R. As collateral for the Loans, Debtor transferred a security interest to Citizens in virtually all of its personal property (the "Property"). Citizens's security interest in the Property was perfected pursuant to the filing of UCC-1 financing statements. *See id.*, ¶¶ V, W. On July 29, 2019, Lender purchased the Loans from Citizens, thereby assuming Citizens's senior position with respect to the perfected security interests in the Property. *Id.*, ¶ X. On August 13, 2019, the Debtor auctioned off the Property in a public sale, generating net proceeds of \$121,304.21 (the "Sale Proceeds"). *Id.*, ¶¶ Z, AA. Accordingly, the Parties have stipulated that Lender has a valid and perfected interest in the Sale Proceeds, which are substantially less than the amount owed to the Lender. *See id.*, ¶¶ BB – DD. The Chapter 7 trustee signed onto the Stipulation, making no objection therein.

Motion to Continue

On November 4, 2019, the last day to file an objection to the Stipulation, creditors Motion Picture Industry Pension Plan, Motion Picture Industry Health Plan, Motion Picture Individual Account Plan, and Motion Picture Editors Guild IATSE Local 700 (collectively, the "Creditors") filed a continuance motion (the "Continuance Motion") [Doc. No. 17] seeking to continue the present hearing by thirty days, or in the alternative, requesting an extension of time to file opposing papers. Creditors's request for additional time was premised solely on their plan to further investigate the underlying transactions based on the unsupported contention that the Stipulation was a disguised insider transfer of assets. Because the Creditors were unable to persuade the Court that they were reasonably likely to prevail in their opposition, the Continuance Motion was denied in full [Doc No. 20]. Furthermore, having failed to timely respond to the Stipulation, the Court determined that any opposing briefs by Creditors would not be reviewed.

As of the preparation of this tentative ruling, no opposing briefs were filed.

II. Findings of Fact and Conclusions of Law

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... LGH Digital Media, Inc., dba Larson Studios Chapter 7

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4001(d)(1), parties may seek court approval of an agreement to modify or terminate the automatic stay. Absent objection, "the court may enter an order approving or disapproving the agreement without conducting a hearing." FRBP 4001(d)(3).

Here, the Stipulation, which provides Lender for relief from stay with respect to the Sale Proceeds, has been properly noticed pursuant to FRBP 4001, and no timely objection has been asserted against it. In addition, the failure of any party in interest to file a written opposition at least fourteen days prior to the hearing as required by LBR 9013-1(f) is deemed as consent to the approval of the Stipulation. LBR 9013-1(h); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Based upon the foregoing, the Stipulation is APPROVED. The Lender is authorized to exercise any state law rights and remedies with respect to the Sale Proceeds. However, the Lender may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The fourteen-day stay prescribed by FRBP 4001(a)(3) is waived.

The Lender shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

LGH Digital Media, Inc., dba Larson

Represented By
Brian L Davidoff

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21936 Dwanna Orange

Chapter 7

#6.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 7077 Alvern Street #A312, Los Angeles, CA 90045 with Exhibit A through F and Proof of Service of Document.

Docket 7

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court notes that Debtor's case was dismissed on October 28, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on August 28, 2019, and it received a favorable judgment on October 09, 2019. This Motion has been filed to allow the Movant to proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property. Under California law, debtors' possessory interests are extinguished following entry of an unlawful detainer judgment and a writ of possession. In re Perl, 811 F.3d 1120, 1128 (9th Cir. 2016). Movant may proceed with its efforts because a state court determined that Debtor does not have the right to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... Dwanna Orange

Chapter 7

possess the premises any longer. *See* Motion for Relief from the Automatic Stay, Ex. D.

Furthermore, the stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Dwanna Orange

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-21491 ARAA Enterprise LLC dba Meat District Co

Chapter 7

#7.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Furniture, Fixtures, and Equipment at 69 N. Raymond Ave. Pasadena, CA 91103 . (Dresser, Glen)

Docket 11

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its rights for storage charges against personal property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See e.g. Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.)*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The subject property has an appraised value between \$8,000 and \$10,000 (Ex. 2) and is encumbered by a security interest in favor of the Movant (*see* Ex. 3; *see also* Doc. No. 8). The liens against the property and the expected costs of sale total \$19,964.28. Declaration of Christa Durfee, ¶¶ 9-10. The Court finds there is no equity and there is no evidence that the trustee can administer the subject property for the benefit of

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... **ARAA Enterprise LLC dba Meat District Co**
creditors.

Chapter 7

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within seven (7) days.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

ARAA Enterprise LLC dba Meat

Represented By

Kristine Theodesia Takvoryan

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

2:19-19849 Sara Elisa Andrade-Vargas

Chapter 7

#8.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2019 GMC Sierra 2500 .

Docket 10

Tentative Ruling:

11/14/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor [**Note 1**], the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 18, 2019

Hearing Room 1568

10:00 AM

CONT... Sara Elisa Andrade-Vargas

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Note 1: The Court notes that the promissory note evidencing the debt at issue was executed by Debtor's spouse, who is not a debtor in the instant case. Nevertheless, in her commencement documents, Debtor concedes that she has an interest in the subject vehicle [*see* Doc. No. 1].

Party Information

Debtor(s):

Sara Elisa Andrade-Vargas

Represented By

Michael H Colmenares

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01384 Mastan, Chapter 7 Trustee v. Discover Bank et al

#1.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01384. Complaint by Peter J. Mastan, Chapter 7 Trustee against Discover Bank, Jason Young Cho. (Charge To Estate).
Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1) (B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Discover Bank

Pro Se

Jason Young Cho

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT...

Keystone Textile, Inc.

Meghann A Triplett
Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01385 Mastan, Chapter 7 Trustee v. US Bank, N.A. et al

#2.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01385. Complaint by Peter J. Mastan, Chapter 7 Trustee against US Bank, N.A., Kenny Hwang, Hee Jung Lee. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINJUE 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

US Bank, N.A.

Pro Se

Kenny Hwang

Pro Se

Hee Jung Lee

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01386 Mastan, Chapter 7 Trustee v. Hwang et al

#3.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01386. Complaint by Peter J. Mastan, Chapter 7 Trustee against Kenny Hwang, Jason Young Cho. (Charge To Estate).
Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1) (B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

HSBC Bank, N.A.

Pro Se

DOES 1-10, Inclusive

Pro Se

Youngduk Duk Cho

Pro Se

Kenny Hwang

Pro Se

Jason Young Cho

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01387 Mastan, Chapter 7 Trustee v. Bank of Hope et al

#4.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01387. Complaint by Peter J. Mastan, Chapter 7 Trustee against Bank of Hope, Jason Young Cho. (Charge To Estate).
Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1) (B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Bank of Hope

Pro Se

Jason Young Cho

Pro Se

Youngduk Duk Cho

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01388 Mastan, Chapter 7 Trustee v. Bank of America, N.A. et al

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01388. Complaint by Peter J. Mastan, Chapter 7 Trustee against Bank of America, N.A.. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Bank of America, N.A.

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#6.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01392. Complaint by Peter Mastan against Flintridge Preparatory School, Inc., Hee Young Hwang, Young J. Hwang, Joyce J. Hwang, Nam Soo Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. code §§3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.	Pro Se
Joyce J. Hwang	Pro Se
Nam Soo Hwang	Pro Se
Young Jae Hwang	Pro Se
Hee Youn Hwang	Pro Se
DOES 1 through 10	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01393 Mastan, Chapter 7 Trustee v. Hwang et al

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01393. Complaint by Peter J. Mastan, Chapter 7 Trustee against In Young Hwang, Twig & Twine, Inc., Danielle Steckler. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

DOES 1 through 10

Pro Se

In Young Hwang

Pro Se

Twig & Twine, Inc.

Pro Se

Danielle Steckler

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01395 Mastan, Chapter 7 Trustee v. JPMorgan Chase Bank, N.A et al

#8.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01395. Complaint by Peter J. Mastan, Chapter 7 Trustee against JPMorgan Chase Bank, N.A, Kenny Hwang, Mirea Rea Hwang, Hee Jung Lee, Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

JPMorgan Chase Bank, N.A

Pro Se

Kenny Hwang

Pro Se

Mirea Rea Hwang

Pro Se

Hee Jung Lee

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01397 Mastan, Chapter 7 Trustee v. Kim et al

#9.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01397. Complaint by Peter J. Mastan, Chapter 7 Trustee against Ji Young Kim, Does 1 - 10, inclusive. (Charge To Estate).
Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 2/11/20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Ji Young Kim

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT...

Keystone Textile, Inc.

Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01398 Mastan, Chapter 7 Trustee v. Matthew Jeon, P.C. et al

#10.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01398. Complaint by Peter J. Mastan, Chapter 7 Trustee against Matthew Jeon, P.C., Matthew Jeon, Hwae Sung. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: NOTICE OF DISMISSAL FILED 10-21-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

DOES 1-10

Pro Se

Matthew J Jeon

Pro Se

Matthew Jeon, P.C.

Pro Se

Hwae Sung

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#11.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01399. Complaint by Peter J. Mastan, Chapter 7 Trustee against Hyun Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#12.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01400. Complaint by Peter J. Mastan, Chapter 7 Trustee against Mirea Rea Hwang, Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT...

Keystone Textile, Inc.

Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01401 Mastan, Chapter 7 Trustee v. Four Season Travel, Inc. et al

#13.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01401. Complaint by Peter J. Mastan, Chapter 7 Trustee against Four Season Travel, Inc., Heidi Kim, Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 2-11-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Four Season Travel, Inc.

Pro Se

Heidi Kim

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01402 Mastan, Chapter 7 Trustee v. Hwang et al

#14.00 Status Hearing RE: [1] Adversary case 2:19-ap-01402. Complaint by Peter J. Mastan, Chapter 7 Trustee against Kenny Hwang, Trigen Int'l, Inc., Beyond Textile, Inc., Does 1 - 10, inclusive. (Charge To Estate). COMPLAINT FOR: (1) AVOIDANCE OF ACTUAL FRAUDULENT TRANSFERS [11 U.S.C. 544(b), 548(a)(1)(A), And 550(a), And Cal. Civ. Code §§ 3439.04(a) And 3439.07]; (2) AVOIDANCE OF CONSTRUCTIVE FRAUDULENT TRANSFERS [11 U.S.C. §§ 544(b), 548(a)(1)(B), And 550(a), And Cal. Civ. Code §§ 3439.04(b) Or 3439.05 And Cal. Civ. Code § 3439.07] (3) CONSPIRACY TO DEFRAUD [11 U.S.C. § 105(a)] (4) FOR RECOVERY OF ILLEGAL DIVIDENDS [Cal. Corp. Code §§ 500, 501 And 506] (5) FOR BREACH OF FIDUCIARY DUTY; AND (6) RECOVERY OF AVOIDED TRANSFER [11 U.S.C. § 550(a)] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Prosecution of this avoidance action against Defendant Kenny Hwang was stayed by Hwang's filing of a Chapter 7 voluntary petition on September 19, 2019 (Case No. 2:19-bk-21045-BR). Default was entered against Defendants Trigen Int'l, Inc. ("Trigen") on October 29, 2019, and against Beyond Textile, Inc. ("Beyond Textile") on November 4, 2019.

Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file Motions for Default Judgment (the "Motions") against Trigen and Beyond Textile by no later than **January 10, 2020**. The Motions shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT...

Keystone Textile, Inc.

Chapter 7

a.m. A Joint Status Report, which shall discuss the status Hwang's Chapter 7 case, shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Kenny Hwang

Pro Se

Trigen Int'l, Inc.

Pro Se

Beyond Textile, Inc.

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01403 Mastan, Chapter 7 Trustee v. K2 America, Inc. et al

#15.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01403. Complaint by Peter J. Mastan, Chapter 7 Trustee against K2 America, Inc., Does 1-10, Inclusive. (Charge To Estate).
Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a), and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1) (B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05, and Cal. Civ. Code § 3439.07]; (3) Avoidance of Preferential Transfers [11 U.S.C. § 547]; (4) Recovery of Avoided Transfers [11 U.S.C. § 550(a)(2)]; and (5) For Unjust Enrichment (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

K2 America, Inc.

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01368 Mastan, Chapter 7 Trustee v. XL Fabrics, Inc.

#16.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01368. Complaint by Peter J. Mastan, Chapter 7 Trustee against XL Fabrics, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

XL Fabrics, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01369 Mastan, Chapter 7 Trustee v. S & H Design, Inc.

#17.00 Status Hearing RE: [1] Adversary case 2:19-ap-01369. Complaint by Peter J. Mastan, Chapter 7 Trustee against S & H Design, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Default was entered against the only Defendant in this matter on October 29, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 10, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than seven days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

S & H Design, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01370 Mastan, Chapter 7 Trustee v. Royal Textile Print, Inc.

#18.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01370. Complaint by Peter J. Mastan, Chapter 7 Trustee against Royal Textile Print, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Royal Textile Print, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01371 Mastan, Chapter 7 Trustee v. Ropiablu, Inc.

#19.00 Status Hearing RE: [1] Adversary case 2:19-ap-01371. Complaint by Peter J. Mastan, Chapter 7 Trustee against Ropiablu, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Default was entered against the only Defendant in this matter on October 29, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 10, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than seven days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Ropiablu, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01372 Mastan, Chapter 7 Trustee v. Romex Textiles, Inc.

#20.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01372. Complaint by Peter J. Mastan, Chapter 7 Trustee against Romex Textiles, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Romex Textiles, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01373 Mastan, Chapter 7 Trustee v. Regency Textiles of California, Inc.

#21.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01373. Complaint by Peter J. Mastan, Chapter 7 Trustee against Regency Textiles of California, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: DISMISSED 10-18-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Regency Textiles of California, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01374 Mastan, Chapter 7 Trustee v. Nobel Textile, Inc.

#22.00 Status Hearing RE: [1] Adversary case 2:19-ap-01374. Complaint by Peter J. Mastan, Chapter 7 Trustee against Nobel Textile, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Default was entered against the only Defendant in this matter on October 29, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 10, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than seven days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Nobel Textile, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01375 Mastan, Chapter 7 Trustee v. JM Story, Inc.

#23.00 Status Hearing RE: [1] Adversary case 2:19-ap-01375. Complaint by Peter J. Mastan, Chapter 7 Trustee against JM Story, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Default was entered against the only Defendant in this matter on October 29, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 10, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than seven days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

JM Story, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01376 Mastan, Chapter 7 Trustee v. DCK America Enterprise, Inc.

#24.00 Status Hearing RE: [1] Adversary case 2:19-ap-01376. Complaint by Peter J. Mastan, Chapter 7 Trustee against DCK America Enterprise, Inc.. (Charge To Estate). Trustee's Complaint to Avoid and Recover Preferential Transfers (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

Tentative Ruling:

11/18/2019

Default was entered against the only Defendant in this matter on October 29, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 10, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are **VACATED**.
- 3) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than seven days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

DCK America Enterprise, Inc.

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01389 Mastan v. SYC Fabric, Inc.

#25.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01389. Complaint by Peter Mastan against SYC Fabric, Inc.. (Charge To Estate). Complaint for: (1) Avoidance of Preferential Transfers [11 U.S.C. § 547]; (2) Recovery of Avoided Transfer [11 U.S.C. § 550(a)]; and (3) Disallowance of Claims [11 U.S.C. § 502] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

SYC Fabric, Inc.

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01390 Mastan v. Traben USA, Inc.

#26.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01390. Complaint by Peter Mastan against Traben USA, Inc.. (Charge To Estate). Complaint for: (1) Avoidance of Preferential Transfers [11 U.S.C. § 547]; (2) Recovery of Avoided Transfer [11 U.S.C. § 550(a)]; and (3) Disallowance of Claims [11 U.S.C. § 502] Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Traben USA, Inc.

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01391 Mastan v. JPMorgan Chase Bank, N.A. et al

#27.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01391. Complaint by Peter Mastan against JPMorgan Chase Bank, N.A., Kenny Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. code §§3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; (3) Avoidance of Preferential Transfers [11 U.S.C. § 547]; and (4) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 19199 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

JPMorgan Chase Bank, N.A.

Pro Se

Kenny Hwang

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01396 Mastan, Chapter 7 Trustee v. Flintridge Preparatory School, Inc. et al

#28.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01396. Complaint by Peter J. Mastan, Chapter 7 Trustee against Flintridge Preparatory School, Inc., Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01404 Mastan, Chapter 7 Trustee v. Hwang et al

#29.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01404. Complaint by Peter J. Mastan, Chapter 7 Trustee against Kenny Hwang, Mirea Rea Hwang, Hyun Hwang, Tri Blossom, LLC, K2 America, Inc., Does 1-10, Inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a), and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05, and Cal. Civ. Code § 3439.07]; (3) Avoidance of Preferential Transfers [11 U.S.C. § 547]; (4) Recovery from Subsequent Transferee [11 U.S.C. §§ 544, 548]; (5) Recovery of Avoided Transfers [11 U.S.C. § 550(a)(2)]; (6) Conspiracy to Defraud [11 U.S.C. § 105(a)]; (7) For Recovery of Illegal Dividends [Cal. Corp. Code §§ 500, 501 and 506]; and (8) For Unjust Enrichment (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Triplett, Meghann)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Kenny Hwang

Pro Se

Hyun Hwang

Pro Se

Tri Blossom, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

K2 America, Inc.

Pro Se

Does 1-10, Inclusive

Pro Se

Mi Rae Hwang

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 19, 2019

Hearing Room 1568

10:00 AM

2:19-14464 Kevin Garnier

Chapter 7

Adv#: 2:19-01234 Li v. Garnier

#30.00 Plaintiff and the Debtor to show cause why the Court should not *sua sponte* lift the automatic stay to allow the State Court Action to proceed to final judgment. Status Conference RE: [1] Adversary case 2:19-ap-01234. Complaint by Qi Li against Kevin Garnier. false pretenses, false representation, actual fraud)) (Wolk, Sarah)

fr. 10-15-19

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-15-19

Tentative Ruling:

10/11/2019

On September 13, 2019, Plaintiff filed a *First Amended Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(B)* [Doc. No. 9] (the "First Amended Complaint"). Under Civil Rule 15(a)(1)(B), Plaintiff's deadline to file the First Amended Complaint without obtaining "the opposing party's written consent or the court's leave" was September 10, 2019 (21 days after service of the Answer). See Civil Rule 15(a)(1)(B) and (a)(2). Plaintiff did not obtain the opposing party's written consent or the Court's leave prior to filing the First Amended Complaint.

On September 18, 2019, the Court issued an *Order on First Amended Complaint* [Doc. No. 10] (the "Order"), which provided in relevant part:

- 1) The deadline for Plaintiff to file an amended complaint as a matter of course was September 10, 2019. Because Plaintiff did not file the First Amended Complaint by this deadline, Plaintiff must obtain either the Defendant's consent or the Court's leave prior to filing the First Amended Complaint.
- 2) Until Plaintiff either (a) obtains Defendant's consent to the filing of the First Amended Complaint or (b) obtains the Court's leave to file the First Amended Complaint upon noticed motion (see Civil Rule 15(a)(2)), the Court will take no action on the First Amended Complaint, and the

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CONT...

Kevin Garnier

Chapter 7

Complaint shall remain the operative pleading in this action. The Clerk of the Court is directed not to issue a Summons in connection with the First Amended Complaint.

Order at 2.

Plaintiff has not obtained Defendant's consent to the filing of the First Amended Complaint and has not obtained the Court's leave to file the First Amended Complaint. Therefore, the Complaint filed on July 22, 2019 remains the operative pleading in this action.

Prior to the Debtor's bankruptcy filing, Plaintiff commenced an action in the State Court (the "State Court Action") seeking to establish the indebtedness alleged to be non-dischargeable in this action (the "Non-Dischargeability Action"). As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether the Defendant is indebted to the Plaintiff; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001).

In the Court's view, the most efficient way to resolve the Non-Dischargeability Action is for Plaintiff to first prosecute the District Court Action to final judgment. In the event Plaintiff obtains judgment in its favor, Plaintiff can then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is non-dischargeable. The State Court Action asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, money had and received, negligence, fraud, and recovery on a contractor's bond. The State Court is better equipped than this Court to determine whether Defendant is indebted to Plaintiff on account of these claims, all of which require the application of substantive non-bankruptcy law.

By separate order, the Court will require Plaintiff and the Debtor to show cause why the Court should not *sua sponte* lift the automatic stay to allow the State Court Action to proceed to final judgment. The hearing on the Order to Show Cause shall take place on **November 19, 2019, at 10:00 a.m.** Plaintiff shall file a response to the Order to Show Cause by no later than **October 29, 2019**. Any opposition to Plaintiff's response shall be filed by no later than **November 5, 2019**. Plaintiff's reply to any opposition shall be filed by no later than **November 12, 2019**.

The Status Conference shall be continued to the date of the hearing on the Orders to Show Cause. At the continued Status Conference, the Court will set updated litigation deadlines.

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CONT... Kevin Garnier

Chapter 7

The Court will prepare and enter the Order to Show Cause and the order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Garnier

Represented By
Misty Wilks

Defendant(s):

Kevin Garnier

Pro Se

Plaintiff(s):

Qi Li

Represented By
Sarah R Wolk
Zachary Levine

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:19-14464 Kevin Garnier

Chapter 7

Adv#: 2:19-01234 Li v. Garnier

#30.10 Status Conference RE: [1] Adversary case 2:19-ap-01234. Complaint by Qi Li against Kevin Garnier. false pretenses, false representation, actual fraud)) (Wolk, Sarah)

fr. 10-15-19

Docket 1

***** VACATED *** REASON: CONTINUED 4-14-20 AT 10:00 A.M.**

Tentative Ruling:

10/11/2019

On September 13, 2019, Plaintiff filed a *First Amended Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(B)* [Doc. No. 9] (the "First Amended Complaint"). Under Civil Rule 15(a)(1)(B), Plaintiff's deadline to file the First Amended Complaint without obtaining "the opposing party's written consent or the court's leave" was September 10, 2019 (21 days after service of the Answer). See Civil Rule 15(a)(1)(B) and (a)(2). Plaintiff did not obtain the opposing party's written consent or the Court's leave prior to filing the First Amended Complaint.

On September 18, 2019, the Court issued an *Order on First Amended Complaint* [Doc. No. 10] (the "Order"), which provided in relevant part:

- 1) The deadline for Plaintiff to file an amended complaint as a matter of course was September 10, 2019. Because Plaintiff did not file the First Amended Complaint by this deadline, Plaintiff must obtain either the Defendant's consent or the Court's leave prior to filing the First Amended Complaint.
- 2) Until Plaintiff either (a) obtains Defendant's consent to the filing of the First Amended Complaint or (b) obtains the Court's leave to file the First Amended Complaint upon noticed motion (see Civil Rule 15(a)(2)), the Court will take no action on the First Amended Complaint, and the Complaint shall remain the operative pleading in this action. The Clerk of the Court is directed not to issue a Summons in connection with the First

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CONT... **Kevin Garnier**
Amended Complaint.

Chapter 7

Order at 2.

Plaintiff has not obtained Defendant's consent to the filing of the First Amended Complaint and has not obtained the Court's leave to file the First Amended Complaint. Therefore, the Complaint filed on July 22, 2019 remains the operative pleading in this action.

Prior to the Debtor's bankruptcy filing, Plaintiff commenced an action in the State Court (the "State Court Action") seeking to establish the indebtedness alleged to be non-dischargeable in this action (the "Non-Dischargeability Action"). As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether the Defendant is indebted to the Plaintiff; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001).

In the Court's view, the most efficient way to resolve the Non-Dischargeability Action is for Plaintiff to first prosecute the District Court Action to final judgment. In the event Plaintiff obtains judgment in its favor, Plaintiff can then return to the Bankruptcy Court to obtain a determination regarding whether such judgment is non-dischargeable. The State Court Action asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, money had and received, negligence, fraud, and recovery on a contractor's bond. The State Court is better equipped than this Court to determine whether Defendant is indebted to Plaintiff on account of these claims, all of which require the application of substantive non-bankruptcy law.

By separate order, the Court will require Plaintiff and the Debtor to show cause why the Court should not *sua sponte* lift the automatic stay to allow the State Court Action to proceed to final judgment. The hearing on the Order to Show Cause shall take place on **November 19, 2019, at 10:00 a.m.** Plaintiff shall file a response to the Order to Show Cause by no later than **October 29, 2019**. Any opposition to Plaintiff's response shall be filed by no later than **November 5, 2019**. Plaintiff's reply to any opposition shall be filed by no later than **November 12, 2019**.

The Status Conference shall be continued to the date of the hearing on the Orders to Show Cause. At the continued Status Conference, the Court will set updated litigation deadlines.

The Court will prepare and enter the Order to Show Cause and the order setting the continued Status Conference.

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CONT... Kevin Garnier

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Garnier

Represented By
Misty Wilks

Defendant(s):

Kevin Garnier

Pro Se

Plaintiff(s):

Qi Li

Represented By
Sarah R Wolk
Zachary Levine

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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10:00 AM

2:19-16493 Robert Arutyunyan

Chapter 7

Adv#: 2:19-01380 Janamian v. Arutyunyan et al

#31.00 HearingRE: [9] Motion to Dismiss Adversary Proceeding

Docket 9

Tentative Ruling:

11/18/2019

Bruce T. McIntosh, has filed a declaration (the "McIntosh Decl.") stating that Defendants did not properly serve the *Motion to Dismiss* [Doc. No. 9] (the "Motion"). There being no response to the McIntosh Decl. and good cause appearing: This hearing and the accompanying Status Conference are **CONTINUED to December 11, 2019, at 10:00 a.m.** Plaintiff shall file an Opposition to the Motion by no later than **November 27, 2019**. Defendants' Reply in support of the Motion shall be filed by no later than **December 4, 2019**.

Party Information

Debtor(s):

Robert Arutyunyan

Represented By
Asbet A Issakhanian

Defendant(s):

Robert Arutyunyan

Pro Se

Klaris Nazaryan

Pro Se

Joint Debtor(s):

Klaris Nazaryan

Represented By
Asbet A Issakhanian

Plaintiff(s):

Soroush Janamian

Pro Se

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10:00 AM

CONT... Robert Arutyunyan

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:19-16493 Robert Arutyunyan

Chapter 7

Adv#: 2:19-01380 Janamian v. Arutyunyan et al

#31.10 Status Hearing

RE: [1] Adversary case 2:19-ap-01380. Complaint by Soroush Janamian against Robert Arutyunyan , Klaris Nazaryan . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(65 (Dischargeability - other))

fr. 11-12-19

Docket 1

Tentative Ruling:

11/18/2019

See Cal. No. 31, above, incorporated in full by reference.

Party Information

Debtor(s):

Robert Arutyunyan

Represented By
Asbet A Issakhanian

Defendant(s):

Robert Arutyunyan

Pro Se

Klaris Nazaryan

Pro Se

Joint Debtor(s):

Klaris Nazaryan

Represented By
Asbet A Issakhanian

Plaintiff(s):

Soroush Janamian

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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CONT... Robert Arutyunyan

Chapter 7

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Hearing Room 1568

10:00 AM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#32.00 HearingRE: [156] Motion for order confirming chapter 11 plan Debtor's Motion to Convert Debtors' Amended Chapter11 Plan of Reorganization: Memorandum of Points and Authorities; Declarations of Damu Vusha and Akiba Vusha in Support Thereof

Docket 156

Tentative Ruling:

11/18/2019

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 102] (the "Disclosure Statement")
2. Debtors' Chapter 11 Plan of Reorganization [Doc. No. 103]
3. Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 73]
4. Order Granting Debtors' Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N,A, and US Bank National Association [Doc. No. 82]
5. Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 107] (the "JPMorgan Stipulation")
6. Order on Stipulation Re: Non-Material Modification to Debtors' Chapter 11 Disclosure Statement and Plan to Clarify Treatment of Claim Per Stipulation [Doc. No. 109] (the "Order on JPMorgan Stipulation")
7. Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization [Doc. No. 120]
8. Notice of Hearing Re: Plan Confirmation and Plan Related Deadlines [Doc. No. 119]
9. Declaration of Peter Garza Regarding Service of the Solicitation Package [Doc. No. 122]
10. Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real

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CONT... Damu Vusha and Akiba Vusha Chapter 11

- Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation")
11. Order Granting Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535 [Doc. No. 138] (the "Order on CSMC 2018-RPL8 Trust Stipulation")
 12. Notice of Motion and Motion to Confirm Debtors' Chapter 11 Plan of Reorganization [Doc. No. 133]
 13. Plan Ballot Summary [Doc. No. 135].
 14. Fifth Interim Report of Patient Care Ombudsman Pursuant to 11 U.S.C. § 333(b) (2) [Doc. No. 139]
 15. Tentative Ruling on Debtor's Motion For Order Continuing Chapter 11 Plan (the "Tentative Ruling") [Doc. No. 143]
 16. Scheduling Order (the "Scheduling Order") [Doc. No. 144]
 17. Brief Amended in Support of Debtors' Motion for Confirmation of Chapter 11 Plan of Reorganization (the "Supplemental Confirmation Brief") [Doc. No. 148]
 18. Order Denying Debtors' Motion For Confirmation Of Chapter 11 Plan Of Reorganization [Doc. No. 152]
 19. Amended Chapter 11 Plan (the "Amended Plan," or the "Plan") [Doc. No. 154]
 20. Motion for order confirming chapter 11 plan Debtor's Motion to Convert Debtors' Amended Chapter 11 Plan of Reorganization (the "Amended Confirmation Brief") [Doc. No. 156]

I. Facts and Summary of Pleadings

Debtors-in-possession, Damu Vusha and Akiba Vusha (the "Debtors"), filed this voluntary Chapter 11 case on February 5, 2018 (the "Petition Date"). The Debtors' primary assets consist of three real properties: (1) their principal residence located at 6122 S. Kings Road, Los Angeles, CA 90056 (the "Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and 1300 W. 69th Street, Los Angeles, CA 90044 (the "69th Street Property") (collectively, the "Properties"). The Debtors also own and operate a residential care facility called Jatkodd Crisis Intervention Center (the "Business") which provides 24/7 care to four developmentally-disabled individuals. The Business operates out of the Wilton Property and pays the Debtors' monthly rent. The Debtors state that post-petition operations from the Business have been profitable. The Debtors also lease out the 69th Street Property for additional monthly income.

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CONT... Damu Vusha and Akiba Vusha

Chapter 11

On August 7, 2019, the Court held a hearing regarding Debtors' first Chapter 11 plan of reorganization [Doc. No. 103], which was then continued to September 24, 2019 [Doc. No. 144] to afford Debtors the opportunity to address various issues with the first plan's proposed terms [**Note 1**]. Having reviewed the Supplemental Confirmation Brief, the Court denied Debtors' first plan without prejudice, finding that the plan could not be crammed down on Class 2(A)—an impaired class deemed to reject the plan. Under the terms of the previous plan, the Debtors would have infringed the absolute priority rule as they proposed to retain their interests in the Properties without providing new value contributions, and while failing to pay Class 2(A) claimants, consisting of general unsecured creditors, an amount equal to their claims. In its denial order, the Court authorized Debtors to modify their plan as needed to ensure that Class 2(A) claimants would be paid with an appropriate interest rate, thereby satisfying the cram down requirements of §1129(b)(2).

On October 4, 2019, the Debtors filed the Amended Confirmation Brief seeking to confirm the Amended Plan, therein addressing the aforementioned issue. Based on the findings and conclusions set forth below, the Court finds it appropriate to CONFIRM the Amended Plan.

Summary of the Amended Plan

Administrative Claims

The Debtors anticipate having the following administrative claims as of the Effective Date:

- i. Law Offices of Michael Jay Berger ("Debtors' Counsel"): \$15,000
- ii. Jennifer Min Liu ("Debtors' Accountant"): \$2,000
- iii. Tamar Terzian (the "Patient Care Ombudsman"): \$1,200

The Debtors propose to pay the foregoing administrative claims in full, once approved by the Court.

Priority Tax Claims

The Debtors propose to pay the priority tax claims of the Internal Revenue Service (\$52,185.95) and Franchise Tax Board (\$14,419) the present value of their claims in full within five years of the petition date in accordance with § 507(a)(8) by making

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CONT... Damu Vusha and Akiba Vusha

Chapter 11

equal monthly installments in the amounts set forth in Exhibit C of the Disclosure Statement.

Class 1(A) – Secured Claim of U.S. Bank, National Association – Accepts the Plan

Class 1(A) consists of the secured claim of U.S. Bank, National Association ("US Bank"). US Bank holds a first-priority lien against the Principal Residence, which secures debt in the amount of \$609,000.

On October 25, 2018, the Debtors filed a *Motion Under LBR 9019 to Approve Compromise Between Individual Debtors Damu Vusha and Akiba Vusha and Creditors Wells Fargo Bank, N.A. and US Bank National Association* [Doc. No. 73] (the "Plan Treatment Stipulation"), which the Court approved by order entered December 6, 2018 [Doc. No. 82]. Pursuant to the Plan Treatment Stipulation, the Debtors propose to pay US Bank's claim in full over 228 months with 3% interest by making monthly payments of \$3,507.48. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$580.97.

US Bank's claim is impaired and, pursuant to the Plan Treatment Stipulation, it is deemed to accept the Plan.

Class 1(B) – Secured Claim of J.P. Morgan Acquisition Corp. – Accepts the Plan

Class 1(B) consists of the secured claim of J.P. Morgan Acquisition Corp. ("JP Morgan"). JP Morgan holds a first-priority lien against the Wilton Property, which secures debt in the amount of \$310,833.69 and \$4,078.86 in pre-petition arrears.

On March 12, 2019, JP Morgan filed a *Stipulation Re: Adequate Protection and Treatment of Creditors' Claim Under Debtors' Chapter 11 Plan of Reorganization* [Doc. No. 95] (the "JP Morgan Stipulation"), which the Court approved by order entered on the same date [Doc. No. 98]. Pursuant to the JP Morgan Stipulation, the Debtors propose to JP Morgan's claim in full with 5.125% interest by making monthly payments of \$1,563.92. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of \$321.56. Finally, the Debtors propose to cure the pre-petition arrears by making six equal monthly installment payments of \$784.33 beginning the first month following confirmation of the Plan.

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JP Morgan's claim is impaired, and it voted to accept the Plan.

Class 1(C) – Secured Claim of CSMC 2018-RPL8 Trust – Accepts the Plan

Class 1(C) consists of the secured claim of CSMC 2018-RPL8 Trust ("CSMC"). CSMC holds a first-priority lien against the 69th Street Property, which secures debt in the amount of \$277,258.87 and \$4,723.57 in pre-petition arrears.

On July 3, 2019, the Debtors filed a *Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property Located at 1300 West 69th Street, Los Angeles, CA 90044-2535* [Doc. No. 130] (the "CSMC 2018-RPL8 Trust Stipulation"), which the Court by order entered on July 24, 2019 [Doc. No. 138]. Pursuant to the CSMC 2018-RPL8 Trust Stipulation, the Debtors propose to pay CSMC's claim in full with 3.25% interest by making monthly payments of \$1,060.60. The Debtors also propose to make the monthly escrow payments for taxes and insurance by making an additional monthly payment of approximately \$308.54. Finally, the Debtors propose to make additional monthly payments of \$61.87 for twelve (12) months to cure pre-petition arrears. **[Note 2]**

CSMC's claim is impaired, and it voted to accept the Plan.

Class 1(D) – Secured Claim of Santander Consumer USA – Deemed to Reject

Class 1(D) consists of the secured claim of Santander Consumer USA ("Santander"). Santander holds a secured lien against the Debtors' 2004 Toyota Sienna, securing debt in the amount of \$3,622.13 and \$1,186.19 in pre-petition arrears. As of April 5, 2019, the outstanding balance of this claim is \$2,561.29. The Debtors propose to pay Santander's claim in full pursuant to the terms of the original Vehicle Loan Agreement, by making monthly payments of \$417.73 until the claim is satisfied.

Santander's claim is impaired, and it did not cast a ballot. Therefore, Class 1(D) is deemed to reject the Plan.

Class 1(E) – Secured Claim of the Internal Revenue Service – Deemed to Reject

Class 1(E) consists of the secured claim of the Internal Revenue Service (the "IRS"). The IRS holds a blanket security lien against the Debtors' assets, securing

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debt in the amount of \$40,222.59. The Debtors propose to pay the IRS's claim in full by making monthly payments of \$759.60 for sixty months, with the applicable IRS interest rate of 5%. [Note 3]

The IRS's claim is impaired, and it did not cast a ballot. Therefore, Class 1(E) is deemed to reject the Plan.

Class 2(A) – General Unsecured Claims – Deemed to Reject

Class 2(A) consists of general unsecured claims ("GUC") totaling \$66,108.32. The Debtors propose to pay 100% of all claims in Class 2(A), with an interest rate of 6%, over a period of five years by making monthly payments of \$1,278.06 beginning on the first day of the month following the Effective Date.

Claims in this class are impaired and entitled to vote on the Plan. No votes were received. Therefore, Class 2(A) is deemed to reject the Plan.

Class 2(B) – Unsecured Claim of U.S. Department of Education – Deemed to Reject

Class 2(B) consists of the unsecured claim of the U.S. Department of Education c/o FedLoan Servicing ("U.S. Dept. of Educ.") for Debtors' student loans totaling \$45,883.05 (the "Student Loans"). The Debtors propose to pay their Student Loans in full over a period of 18 years in accordance with the current terms of repayment. The Debtors state that they are on an "income-based" repayment plan and are not making any payments. Debtors propose to begin making payments of \$212.42 per month beginning on the first day of the month following the Effective Date.

Class 2(B) is impaired, and U.S. Dept. of Educ. did not cast a ballot. Therefore, Class 2(B) is deemed to reject the Plan.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions

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of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a). The Plan contains five classes of secured creditors, a class of general unsecured creditors, and a class comprised of the unsecured claim of the U.S. Department of Education for the Debtors' student loans.

As to the discrimination of unsecured creditors, the Court recognizes that there is split between courts prohibiting the discrimination of unsecured debt in favor of long-term nondischargeable unsecured debt. *See In re Sutton*, No. 10-10539-8-RDD, 2012 WL 433480, at *3 (Bankr. E.D.N.C. Feb. 9, 2012) (discussing the jurisdictional split regarding separate classification of student loans). Courts allowing for such discrimination reason that: "1) the debtor will not be afforded a fresh start if the student loan is not separated from other general unsecured claims; 2) strong public policy exists for repayment of educational loans; 3) Congress prefers reorganization over liquidation; and 4) unsecured creditors are not harmed by favorable treatment because distribution must be equivalent to liquidation under Chapter 7." *See at* *4. Here, the Debtors' separate classification is consistent with the objectives set forth in *In re Sutton*. First, separate classification of the U.S. Department of Education's educational loan is permissible because the long-term student loan debt is nondischargeable pursuant to § 523(a)(8) and is clearly dissimilar from the remaining general unsecured claims. Second, separate classification would not result in any unfair discrimination against either class of unsecured creditors in violation of § 1129(b)(1) because the Plan proposes to remunerate both classes of claims in full. Third, any discrepancy in interest rates paid out to either class of unsecured creditors is the result of the longer repayment term to Class 2(B) pursuant to the Debtors'

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respective student loan agreements.

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Therefore, the Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

The Plan appropriately designates classes of claims and interests. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that all classes are impaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment of all impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each

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claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by income from the Business, the Debtors' monthly Social Security Income, rental income from the 69th Street Property and the Wilton Property, and a \$2,500 monthly contribution from one of the Debtor's mother.

As demonstrated by Debtors' projected income and expenses for the next five years [Doc. No. 154], these funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Debtors are individuals. Section 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Debtors are individuals. Section 1123(a)(7) does not apply.

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10. Section 1123(a)(8)

Section 1123(a)(8) was added to the Bankruptcy Code to provide that, to be confirmable, an individual debtor's plan must provide for the payment to creditors of all or such portion of earnings from personal services or other future income of the debtor. The Plan provides for the payment of a portion of the Debtors' future income to creditors. The Plan satisfies § 1123(a)(8).

11. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required in a plan of reorganization. The Plan appropriately implements many of § 1123(b)'s optional provisions. For example, the Plan provides for the assumption of executory contracts and unexpired leases pursuant to § 1123(b)(2); provides for the settlement or adjustment of claims pursuant to § 1123(b)(3)(A) and designates the Debtors as the representatives of the estate to enforce any claims or causes of actions belonging to the estate pursuant to § 1123(b)(3)(B); and modifies the rights of certain holders of claims pursuant to § 1123(b)(5). In sum, the Plan complies with § 1123(b).

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Debtors have:

- 1) Complied with the Bankruptcy Code's provisions with respect to the use of cash collateral (*see Order Re: Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral* [Doc. Nos. 23, 43]);
- 2) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see Order Approving Debtors' Disclosure Statement in Support of Plan of Reorganization* [Doc. No. 120]);
- 3) Obtained Court approval of the employment of professional persons (*see* Doc. Nos. 32, 35, 38, 45 and 63); and
- 4) Filed monthly operating reports.

Accordingly, the Debtors have satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not

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by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Debtors have complied with the requirements of the Code throughout this case. Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith because no party has objected to confirmation. The Plan satisfies § 1129(a)(3).

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides for Court approval of all professional fees. *See* Plan at II.a.1.i. The Plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Debtors are individuals. Section 1129(a)(5) does not apply.

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SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1(A), 1(B), and 1(C) have accepted the Plan. Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. Based on the terms proposed in the Plan, the Debtors will pay rejecting claims in full. Accordingly, all classes have either accepted the Plan or will receive treatment that is no less favorable than they would receive under Chapter 7. The Plan satisfies § 1129(a)(7).

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. Impaired Classes 1(A), 1(B), and 1(C) have accepted the Plan. Classes 1(D), 1(E), 2(A), and 2(B) did not cast ballots and are deemed to have rejected the Plan. *See In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (To accept a Plan, members of a class must affirmatively vote in favor of the Plan). Accordingly, the Plan does not satisfy § 1129(a)(8) and must, therefore, satisfy § 1129(b).

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

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The Plan provides for the payment of all outstanding allowed administrative claims in full as soon as the fees are approved by the Court and none of the professionals have requested a different payment arrangement. The Plan also provides for payment of priority tax claims in a manner consistent with § 1129(a)(9)(C)(ii). The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Classes 1(A), 1(B), and 1(C) consist of non-insider claims, are impaired, and have voted to accept the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtors submit that they have sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon a review of the budget projections included as Exhibit C to the Disclosure Statement (which was updated on Exhibit 6 to the Amended Confirmation Brief), the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization.

The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. To the extent any fees are outstanding, the Plan provides that all such fees will be paid by the Effective Date.

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Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the Plan. Section 1129(a)(15) does not apply because no objections to the Plan are on file.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

Section 1129(b), which contains requirements for cram down, applies. Pursuant to § 1129(b)(1), a plan may be confirmed where not all impaired classes vote to accept the plan, provided that "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." With respect to a class of secured claims, the condition that a plan be fair and equitable includes the following requirements:

- (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a

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value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A).

Under the Plan, Classes 1(D) and 1(E) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these classes. In this case, Debtors propose to pay Class 1(D) 100% of the outstanding claim balance at an interest rate of 25.49%, which was set pursuant to the vehicle purchase agreement. *See* Exhibit 1 of the Amended Confirmation Brief. Comparably, the Debtors propose to pay Class 1(E) 100% of its claim with the applicable interest rate of 5% set by the Internal Revenue Service. *See* I.R.S. Rev. Rul. 2019-15. Given that the Plan provides that Classes 1(D) and 1(E) will receive the total amount of their claims, with an appropriate interest rate, these claimants will receive the present value of their claims as of the Effective Date. The Court accordingly finds that the proposed treatment of Classes 1(D) and 1(E) is consistent with § 1129(b)(2)(A)(i)(II).

In sum, the "fair and equitable" requirement set forth in § 1129(b)(2) is satisfied with respect to Classes 1(D) and 1(E). The Plan may be crammed down on these classes.

With respect to a class of unsecured claims, the condition that a plan be fair and equitable includes the following requirements:

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this

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section.

11 U.S.C. § 1129(b)(2)(B).

Under the Plan, Classes 2(A) and 2(B) are impaired, did not cast ballots, and are deemed to reject the Plan. Therefore, the Plan must be crammed down on these classes.

As to Class 2(A), Debtors propose to pay general unsecured creditors (the "GUC") 100% of their claims, with an interest rate of 6%, which is comprised of the federal prime rate of 5% and an addition of one hundred (100) basis points to account for the risk absorbed by creditors [**Note 4**]. The Court determines that payment to the GUC at the proposed interest rate is adequate. *See Till v. SCS Credit Corp.*, 541 U.S. 465, 478 – 79 (2004) (determining that debtors invoking the cram down option must pay rejecting creditors' claims at the national prime interest rate, adjusted to account for a number of critical factors); *First S. Nat'l Bank v. Sunnyslope Hous. L.P. (In re Sunnyslope Hous. L.P.)*, 859 F.3d 637, 646 (9th Cir. 2017) (applying the "Till test" to ensure that a creditor received the present value of its claim through payments proposed in a Chapter 11 plan). Therefore, the Plan satisfies § 1129(b)(2)(B)(i) with respect to Class 2(A).

Separately, the Debtors propose to pay Class 2(B), consisting of unsecured student loans, in full at the interest rate fixed by the Debtors' individual student loan agreements. As the claimant in Class 2(B) is entitled to receive the total amount of its claim, with an appropriate rate of interest, the Court finds that the treatment of Class 2(B) under the Plan is consistent with § 1129(b)(2)(B)(i). Notwithstanding the Debtors' proposed payment schedule of claims in Class 2(B), this tentative ruling will not alter or affect any terms or provisions on the Debtors' respective student loan agreements.

Therefore, as the "fair and equitable" requirement provided in § 1129(b)(2) is satisfied with respect to Classes 2(A) and 2(B), the Plan may be crammed down on these classes.

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

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SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

Post-Confirmation Status Conference

A Post-Confirmation Status Conference shall be held on **March 18, 2020, at 10:00 a.m.** A Post-Confirmation Status Report shall be filed by no later than fourteen days prior to the hearing.

III. Conclusion

For the reasons set forth above, the Plan is CONFIRMED. The Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court approved stipulations between the Debtors and US Bank [Doc. Nos. 73, 82], JP Morgan [Doc. Nos. 95, 98], and CSMC [Doc. Nos. 130, 138].

Note 2: The Court notes minor differences in the proposed treatment of Class 1(C) between the Supplemental Brief [Doc. No. 148] and the Amended Confirmation Brief

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[Doc. No. 154]. On the Supplemental Brief, the Debtor proposes to pay a monthly escrow payment of \$341.13, while apparently revising this figure to \$308.54 in the Amended Confirmation Brief. The Debtors have also corrected proposed arrearage payments, which will now be made in monthly installments of \$61.87 over 12 months, and not over a period of 60 months. *Compare* Doc. No. 148 at 12 *with* 154 at 14.

Note 3: *See* I.R.S. Rev. Rul. 2019-15.

Note 4: At the time the Court prepared its tentative ruling denying the Debtors' previous plan, which became the final ruling by court order [Doc. No. 152], the prime interest rate was 5%. *See* Board of Governors of the Federal Reserve System, Federal Reserve Press Release (September 18, 2019), <https://www.federalreserve.gov/monetarypolicy/files/monetary20190918a1.pdf>.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:19-10549 Bahram Zendedel

Chapter 7

#33.00 Hearing
RE: [96] Motion for Entry of an Order to Compel Attendance of Debtor at 11 U.S.C. § 341(a) Meeting of Creditors Under 11 U.S.C. §§ 105(A), 341(A), and 521(A)(3)

Docket 96

Tentative Ruling:

11/18/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Entry of an Order to Compel Attendance of Debtor at 11 U.S.C. § 341(a) Meeting of Creditors Under 11 U.S.C. §§ 105(a), 341(a), and 521(a)(3) [Doc. No. 96] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Bahram Zendedel (the "Debtor") filed a voluntary Chapter 7 petition on January 18, 2019. The Chapter 7 Trustee (the "Trustee") moves for an order compelling the Debtor to attend a continued § 341(a) meeting of creditors. No opposition to the Motion is on file.

Summary of the Motion

The Trustee makes the following arguments and representations in support of the Motion:

The first meeting of creditors at which the Debtor appeared was conducted on March 18, 2019. The Trustee has conducted multiple continued meetings of creditors to obtain further information from the Debtor.

The Debtor failed to appear at a continued meeting of creditors scheduled on October 2, 2019. The Debtor also failed to appear at a continued meeting of creditors scheduled on October 21, 2019.

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The Debtor is evading examination. Further examination of the Debtor is necessary to facilitate the administration of the estate. Specifically, the Debtor must be examined regarding numerous business holdings that were not scheduled. The Trustee has been informed that the Debtor has engaged in a pattern of hiding assets, and is being investigated in three separate states for defrauding gold and jewelry merchants.

The Court should compel the Debtor to attend a continued meeting of creditors on a date to be set by the Court. If the Debtor fails to appear at the continued meeting of creditors, the Court should issue a body detention order.

II. Findings and Conclusions

Section 343 provides in relevant part:

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor.

Collier on Bankruptcy, the leading treatise, provides that if the debtor fails to appear at the meeting of creditors, the "court may choose to compel the debtor's attendance" through use of its contempt power. 3 *Collier on Bankruptcy* ¶ 343.09 (16th ed. 2019).

The Trustee has a statutory obligation to "investigate the financial affairs of the debtor." § 704(a)(4). The Debtor has a statutory obligation to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." § 521(a)(3).

By failing to appear at two continued meetings of creditors, the Debtor has not complied with his obligations under the Bankruptcy Code. The Debtor chose to seek bankruptcy protection. Having benefited from the protections of the Bankruptcy Code, the Debtor cannot now shirk his corresponding obligations. The Debtor's appearance at the continued meeting of creditors is necessary to allow the Trustee to fulfill his obligation to investigate the Debtor's financial affairs.

The Court will order the Debtor to appear at a continued meeting of creditors, at a date and time to be selected by the Trustee. If the Debtor fails to appear at the continued meeting of creditors, the Court will issue an order subjecting the Debtor to body detention.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

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2:19-17051 Marlon Camar Salamat and Daisy Anne Boiser Salamat

Chapter 7

#34.00 HearingRE: [37] Motion for Order Confirming Order of Discharge Does Not Apply to Corporate Entities, That No Stay Was in Effect, and That State Court Litigation May Proceed Against Corporate Defendants with Proof of Service

Docket 37

Tentative Ruling:

11/18/2019

The Court GRANTS the Motion as set forth below.

Pleadings Filed and Reviewed:

1. Chapter 7 Petition [Doc. No. 1]
2. Notice of Motion and Motion for Order Confirming Order of Discharge does not Apply to Corporate Entities, that No Stay was in Effect under 11 U.S.C. § 362(c) (4)(A)(ii), and that State Court Litigation may Proceed Against Corporate Defendants (the "Motion") [Doc. No. 37]
3. Order of Both Discharge [Doc. No. 28]
4. Complaint by Angela Sandra Legaspi Fernando against Marlon Camar Salamat and Daisy Anne Boiser Salamat, Adversary Case 2:19-ap-01411-ER [Adv. No. 1]
5. No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Marlon Camar Salamat (individually referred to as "Marlon") and Daisy Anne Boiser Salamat (individually referred to as "Daisy") (collectively, the "Debtors") filed a voluntary Chapter 7 petition on June 17, 2019 (the "Petition") [Doc. No. 1]. On their commencement documents, Debtors state that they have used three different *doing business as* ("dba") names in the last eight years: Iconcare Rehab, Inc. ("Iconcare"), At Home Therapy, LLC ("At Home"), and Oasis Rehab, Inc. ("Oasis"). See Petition at 2. Debtors' schedules do not indicate that they possess any ownership interests in the dbas referenced above. As further discussed below, on September 17, 2019, Creditor Angela Sandra Legaspi Fernando (the "Movant") filed an adversary

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proceeding (2:19-ap-bk-01441-ER) seeking a nondischargeability judgment against Debtors pursuant to §§ 523(a)(2), (a)(4), and (a)(6) (the "Adversary Proceeding"). The Chapter 7 Trustee issued a Report of No Distribution on September 5, 2019. On September 30, 2019, the Court entered an order of discharge as to both debtors (the "Discharge Order") [Doc. No. 28], and thereafter closed the case on October 16, 2019.

The Motion

The Movant successfully motioned to reopen this matter on October 22, 2019 [Doc. No. 35] in order to file the Motion. As set forth in the Motion, Movant seeks an order confirming that the Discharge Order does not preclude her from litigating state law claims against Iconcare and At Home in an action currently pending in California Superior Court, County of Los Angeles, captioned *Angela Fernando v. Marlon Salamat, et al.*, Case No. BC722168 (the "State Action"). Movant further asks for confirmation that no stay was in effect when the State Action was filed on September 18, 2019. Mirroring many of the allegations raised in the Adversary Proceeding, the complaint in the State Action advances numerous claims against At Home, Iconcare, and Marlon, which include, *inter alia*: fraud; negligent misrepresentation, breach of fiduciary duty, breach of contract, conversion, and for the dissolution of Iconcare. *See* Motion, Ex. A. The filing of the Petition has allegedly stayed all proceedings in the State Action.

The Movant contends that although At Home and Iconcare (together, the "Entities") are identified as dbas in the Discharge Order, neither the automatic stay nor the discharge injunction should prevent collection actions because these entities are non-debtors in the bankruptcy case. In short, the Movant requests an order confirming that the State Action did not violate the automatic stay as to the Entities and that Movant may prosecute its nonbankruptcy claims against the Entities, with the caveat that enforcement of any judgment adverse to the Debtors will be dependent on the outcome of the pending Adversary Proceeding.

The Adversary Proceeding

For additional context, the Court summarizes the substantive allegations asserted in the Adversary Proceeding below.

On or about April 2017, Marlon and Movant discussed the formation of a

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business venture, which eventually became formalized as Iconcare. *See* Complaint, 2:19-ap-bk-01441-ER, Adv. No. 1 (the "Complaint") at 2-3. According to the Movant, Marlon volunteered to assume a managerial role, but assured that profits would be split proportionally, and Movant would retain a prominent position in Iconcare. *See id.* at 3. Marlon and Movant executed a shareholder agreement on May 18, 2017, thereon encapsulating their rights and duties with respect to Iconcare [**Note 1**]. *Id.* at 26; *see* Motion, Ex. B. Based on these general representations, among other assurances, the Movant extended two personal loans to Marlon and At Home totaling approximately \$100,000, with the expectation that these funds would be paid back to fund Iconcare. Complaint at 4-5. The parties executed a promissory note with respect to the first loan in the amount of \$20,000. *Id.* at 4. Pursuant to the shareholder agreement, Movant also expected to be reimbursed for any physical therapy services rendered as an Iconcare provider. *Id.* at 5.

Starting on or about August 2017, Movant began asking Marlon to compensate her for services provided, without success. Later, on or about July 2018, Marlon allegedly admitted to appropriating Movant's monies for personal use, further claiming he would not be returning said monies. *Id.* at 6. Apart from the misconduct asserted above, Movant further alleges that Marlon failed to act in accordance with his duties as vice-president and Treasurer of Iconcare. *See id.* at 5-6. The injuries caused by Marlon's misrepresentation have also impaired Movant's ability to repay a capital loan taken out to fund Iconcare's operations. *Id.* at 7. Iconcare has ceased business operations as of August 2018. *Id.* at 6. Based on the foregoing, the Movant requests a nondischargeability judgment against Debtors pursuant to §§ 523(a)(2), (a)(4), and (a)(6).

The Adversary Proceeding remains pending in this Court. As of the preparation of this tentative ruling, no opposition has been filed in response to the Motion.

II. Findings of Fact and Conclusions of Law

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the

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following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

In *Ingersoll-Rand Financial Corp. v. Miller Min. Co., Inc.*, the Ninth Circuit established that absent any special circumstances, the automatic stay is "limited to debtors and [does not] include non-bankrupt co-defendants." 817 F.2d 1424, 1427 (9th Cir. 1987) (internal citations omitted). Similarly, in *In re Spencer*, a bankruptcy court concluded that the automatic stay did not protect a corporation owned by a debtor, reasoning that under California law, "a corporation is considered a legal entity separate and distinct from its owner or owners." 123 B.R. 858, 860 (Bankr. N.D. Cal. 1991) (citing the California Supreme Court's holding in *Merco Constr. Eng'r. Inc. v. Municipal Court*, 21 Cal.3d 724, 729 (1978)) (abrogated on unrelated grounds by *In re Pinkstaff*, 974 F.2d 113 (9th Cir. 1992)).

The Court's independent research uncovered additional cases following the rationale established in *Ingersoll-Rand Financial Corp.* and *In re Spencer*. In *In re Venture Properties, Inc.*, 37 B.R. 175 (Bankr. D.N.H. 1984), the court determined that the automatic stay did not apply to property owned by a non-debtor entity. The corporate debtor at issue was a partner in a non-debtor limited partnership, which possessed buyer's rights over certain property. *See id.* at 176. Following its bankruptcy filing, the debtor motioned for injunctive relief, seeking to enjoin third parties from selling the property. *See id.* The bankruptcy court denied the debtor's request to extend the bankruptcy stay, reasoning that there was—

"no essential difference in [the debtor's] position in this case and that of any debtor who might contend that 'property of the estate' was involved because the debtor owned an interest in a non-debtor entity which itself had a legal or equitable interest in some asset."

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Id. at 177.

Similarly, in *In re Loughnane*, 28 B.R. 940, 941 (Bankr. D. Colo. 1983), an individual debtor attempted to block the IRS's efforts to levy bank accounts in the debtor's wholly-owned corporation, arguing that the automatic stay had been violated. Finding that the debtor's personal property rights represented by the stock certificates were part of the estate, the court nonetheless held that the corporate entity itself was not estate property. *Id.* at 942. Therefore, the IRS did not intrude upon estate property in attempting to collect back taxes owed by the corporation. *Id.* Finally, actions taken by corporate officers of a nondebtor corporation were found to not violate the automatic stay, where the debtor had a 50% ownership interest. *In re Calvert*, 135 B.R. 398, 400-02 (Bankr. S.D. Cal. 1991) (finding that the corporation was a separate legal entity entitled to act through officers and board of directors).

The Court is persuaded by the rationale reached in the foregoing cases. The record provided here parallels the circumstances described above. Although it is established that one of the Debtors possesses an interest in the Entities, the Court is not aware that either At Home or Iconcare have taken any steps to invoke bankruptcy protections. *Cf. In re Venture Properties, Inc.*, 37 B.R. at 177 ("[i]t has been a cardinal principle of bankruptcy law from the beginning that its effects do not normally benefit those who have not themselves 'come into' the bankruptcy court with their liabilities and all their assets."). As such, absent any compelling arguments to the contrary, it would be inconsistent with the conclusions discussed above to find that the automatic stay protected the Entities [Note 2]. Based on the foregoing, the Court finds that the automatic stay was not in effect as to At Home and Iconcare as of the filing of the State Action.

Relatedly, the discharge injunction triggered by the Discharge Order does not release the Entities from any debt arising from an adverse judgment in the State Action. *See Underhill v. Royal*, 769 F.2d 1426, 1431-32 (9th Cir. 1985) (stating that "discharge of the principal debtor in bankruptcy will not discharge the liabilities of co-debtors or guarantors"); *see also Matter of Edgeworth*, 993 F.2d 51, 53 (5th Cir. 1993) (discharge only releases the debtor from personal liability for the debt, but the debt can still be collected from liable third-party entities). Accordingly, the Movant may proceed under applicable non-bankruptcy law to enforce its remedies in State Action as to the Entities. To the extent that the Movant obtains a judgment in the State Action

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for which the Debtors are personally liable, such judgment will be unenforceable pending resolution of the Adversary Proceeding.

In addition to the findings set forth above, the Court deems the Debtors' failure to file a response or opposition as consent to granting the Motion pursuant to Local Bankruptcy Rule 9013-1(h).

III. Conclusion

Based on the foregoing, the Court GRANTS the Motion as follows: 1) the automatic stay was inapplicable to the Entities at the time the State Action was filed, and 2) the discharge injunction does not preclude Movant from proceeding with the State Action against the Entities. All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Pursuant to the shareholder agreement, Movant and Marlon own 51% and 49% of Iconcare, respectively.

Note 2: According to Movant, Marlon has a controlling stake in At Home.

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Accordingly, she asserts alter ego allegations against him in both the Adversary Proceeding and the State Action complaints. *See* Motion, Ex. A, ¶¶ 10-13; Adversary Proceeding, Adv. No. 1 [Complaint], ¶ 17. The Court acknowledges that based on the findings made in *In re Calvert*, alter ego allegations may serve as a reason to extend automatic stay protections to some debtor-owned entities. *See In re Calvert*, 135 B.R. at 402. However, the Court distinguishes *In re Calvert* to the extent that any adverse judgment against the Debtors in state court shall be unenforceable pending resolution of the Adversary Proceeding in this forum.

Party Information

Debtor(s):

Marlon Camar Salamat

Represented By
Michelle A Marchisotto

Joint Debtor(s):

Daisy Anne Boiser Salamat

Represented By
Michelle A Marchisotto

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#35.00 HearingRE: [3471] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors Notice Of Motion And Motion For Entry Of An Order Pursuant To Section 1121 Of The Bankruptcy Code Extending The Exclusive Periods To File A Chapter 11 Plan And Solicit Acceptances; Memorandum Of Points And Authorities; Declaration Of Richard G. Adcock

Docket 3471

Tentative Ruling:

11/18/2019

For the reasons set forth below, the Motion is GRANTED, without prejudice to the Committee's ability to move to terminate exclusivity for cause at any time, pursuant to § 1121(d)(1).

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 3471] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Reservation of Rights Regarding the Debtors' Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 3542]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On December 28, 2018, the Court entered an order extending the exclusive period within which the Debtors could file and solicit votes on a plan of reorganization from December 29, 2018 and February 27, 2019, to April 28, 2019 (filing a plan) and June 27, 2019 (obtaining acceptances). Doc. No. 899. On June 7, 2019, the Court extended

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the exclusivity period to August 26, 2019 (filing a plan) and October 25, 2019 (obtaining acceptances). Doc. No. 2520. On September 11, 2019, the Court extended the exclusivity period to October 25, 2019 (filing a plan) and December 24, 2019 (obtaining acceptances). Doc. No. 3039.

The Debtors move to further extend the exclusivity period to December 31, 2019 (filing a plan) and February 29, 2019 (obtaining acceptances), without prejudice to the Debtors' ability to seek further extensions.

The Official Committee of Unsecured Creditors (the "Committee") filed a Reservation of Rights to the Motion. The Committee asserts that the Debtors' present Plan of Liquidation is unconfirmable on its face, because it proposes to pay secured creditors the amount of their asserted claims, prior to the resolution of adversary proceedings brought by the Committee challenging the validity of such claims. The Committee states that it is attempting to resolve this issue with the Debtors, but reserves its rights to seek to terminate exclusivity in order to pursue an alternative plan.

II. Findings and Conclusions

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988). A "transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution." *Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002). In determining whether cause exists to extend the exclusivity period, courts consider a variety of factors, including:

- 1) the size and complexity of the case;
- 2) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- 3) the existence of good faith progress toward reorganization;
- 4) the fact that the debtor is paying its bills as they become due;
- 5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

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- 6) whether the debtor has made progress in negotiations with its creditors;
- 7) the amount of time which has elapsed in the case;
- 8) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
- 9) whether an unresolved contingency exists.

In re Dow Corning Corp., 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997).

The Court finds that cause exists to further extend the exclusivity period to December 31, 2019 (filing a plan) and February 29, 2019 (obtaining acceptances), as requested by the Debtors. This extension is without prejudice to the Committee's ability to seek to terminate exclusivity for cause at any time, pursuant to § 1121(d)(1).

An extension of exclusivity is warranted for multiple reasons. First, these are complex cases. In addition to bankruptcy law, the Debtors' sale of their hospitals implicates issues of healthcare regulatory law, labor law, and mergers and acquisitions law. Second, the Debtors have made significant progress in these cases. The Debtors' sale of O'Connor Hospital ("O'Connor") and Saint Louise Regional Hospital ("Saint Louise") to the County of Santa Clara closed on February 28, 2019. On May 2, 2019, the Debtors obtained approval of the sale of substantially all the assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center (including Seton Coastside) to Strategic Global Management, Inc. ("SGM" and the "SGM Sale," respectively). Doc. No. 2306. On November 14, 2019, the Debtors obtained entry of an order approving the SGM Sale free and clear of the Additional Conditions (as defined in the APA) which the California Attorney General had sought to impose. Doc. No. 3611.

Third, the Debtors require additional time to negotiate a Plan of Liquidation. The Debtors are engaged in ongoing discussions with the major constituents in these cases regarding the Plan.

Fourth, the Debtors are paying their ordinary course administrative expense as they come due. As a result, creditors are not prejudiced by the requested extension.

Fifth, the Debtors have filed a Plan. Although objects to the Plan remain outstanding, the Debtors are working with stakeholders to resolve issues through an amended Plan.

Sixth, the cases have not been pending for an unreasonable amount of time in view of their complexity. The cases have been pending for approximately fourteen months.

Seventh, the Debtors did not seek the extension to pressure creditors, as evidenced

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by the fact that the Debtors continue to negotiate with the Committee to attempt to resolve the Committee's objections to the Plan.

Eighth, various unresolved contingencies exist, the most significant of which is the need to close the SGM Sale.

In sum, consideration of the *Dow Corning* factors supports the extension of exclusivity requested by the Debtors. The Motion is GRANTED, without prejudice to the Committee's ability to move to terminate exclusivity for cause at any time, pursuant to § 1121(d)(1).

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01405 Capitol Distribution Company, LLC v. Bonert et al

#100.00 Hearing
RE: [17] Motion for Remand with proof of service (Blakeley, Scott)

Docket 17

***** VACATED *** REASON: CONTINUED 12-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Inc., a California

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

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DOES 1 through 10, inclusive

Pro Se

Beefam, LLC

Represented By
Lawrence M Jacobson

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Capitol Distribution Company, LLC

Represented By
Sean Lowe
Scott E Blakeley

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2:19-20836 Michael Bonert

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Adv#: 2:19-01406 Stratas Foods LLC v. Bonert et al

#101.00 Hearing
RE: [17] Motion for Remand with proof of service (Blakeley, Scott)

Docket 17

***** VACATED *** REASON: CONTINUED 12-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

Beefam, LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

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Pro Se

Vivien Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Stratas Foods LLC

Represented By
Sean Lowe
Scott E Blakeley

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2:19-20836 Michael Bonert and Vivien Bonert

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#102.00 Hearing
RE: [13] Application to Employ Fredman Lieberman Pearl LLP as General
Bankruptcy and Reorganization Counsel

FR. 11-5-19

Docket 13

Tentative Ruling:

11/18/2019

For the reasons set forth below, the Debtors are authorized to employ FLP as their general bankruptcy counsel.

Pleadings Filed and Reviewed:

- 1) Debtors' Application for Authority to Employ Fredman Lieberman Pearl LLP as their General Bankruptcy and Reorganization Counsel [Doc. No. 13] (the "Employment Application")
- 2) Notice of Opposition and Request for a Hearing and Memorandum of Points and Authorities in Support of Creditors' Opposition to Debtors' Application to Employ Counsel [Doc. No. 30] (the "Opposition")
- 3) Debtors' Reply to Opposition to Application to Employ Fredman Lieberman Pearl LLP as their General Bankruptcy and Reorganization Counsel [Doc. No. 37] (the "Reply")
 - a) Notice of Errata [Doc. No. 42]

I. Facts and Summary of Pleadings

Michael Bonert and Vivien Bonert (the "Debtors") filed a voluntary Chapter 11 petition on September 12, 2019 (the "Petition Date"). On September 16, 2019, the Debtors moved to employ Fredman Lieberman Pearl LLP ("FLP") as their general bankruptcy counsel (the "Employment Application"). Creditors Capitol Distribution Company, LLC, Coastal Carriers, LLC, Packaging Corporation of America, Seneca Foods Corporation, and Stratas Foods LLC (collectively, the "Objecting Creditors") oppose the Employment Application.

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Background

Prior to the Petition Date, the Debtors operated a pie manufacturing company known as Bonert's Incorporated (the "Bakery"). In 2016, the Bakery ceased conducting business after its lender caused the Bakery's assets to be sold through a federal receivership. Proceeds of the receivership sale were used to pay secured creditors, but were not sufficient to pay unsecured trade creditors, some of whom obtained unopposed judgments against the Bakery.

On August 13 and 14, 2019, the Objecting Creditors filed four collection actions (the "Collection Actions") against the Bakery, the Debtors, and LLCs owned by the Debtors that had leased properties to the Bakery (such LLCs, the "Affiliates"). The Collection Actions allege, *inter alia*, that the Debtors operated the Affiliates and the Bakery as a single enterprise for the purpose of defeating the rights of creditors; that the Debtors are the alter ego of the Bakery; and that consequently the Debtors are liable for trade debt incurred by the Affiliates and the Bakery. Two of the Collection Actions were filed in the United States District Court for the Central District of California (the "District Court") and two of the Collection Actions were filed in the Los Angeles Superior Court (the "State Court").

Debtors sought bankruptcy protection for the purpose of having all alter-ego claims arising in connection with the Debtors' operation of the Affiliates and the Bakery adjudicated before the Bankruptcy Court. Pursuant to this objective, on September 13 and 16, 2019, the Debtors removed all four of the Collection Actions to the Bankruptcy Court.

On October 17, 2019, the Court approved stipulations remanding two of the Collection Actions to the District Court. Both stipulations were without prejudice to any party's right (1) to move for referral of the action back to the Bankruptcy Court or (2) to move for an injunction against the prosecution of the action. The Collection Actions that originated in the State Court remain pending before this Court. Motions for orders remanding those Collection Actions to the State Court are scheduled to be heard on December 11, 2019.

The Employment Application

FLP makes the following disclosures in the Employment Application:

For several years prior to the Petition Date, FLP represented the Debtors and the Affiliates. FLP no longer represents any Affiliate.

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On August 15, 2019—before the Debtors had contemplated seeking bankruptcy protection—FLP received from the Debtors a payment of \$60,000 on account of non-bankruptcy legal services. On September 6, 2019, FLP returned the \$60,000 payment to the Debtors to eliminate any doubt regarding whether it had received an avoidable preference. The \$60,000 payment was replaced by two of the Affiliates.

Summary of the Objecting Creditors' Opposition to the Employment Application

The Objecting Creditors make the following arguments in their Opposition to the Employment Application:

FLP is not disinterested. FLP has previously represented the Affiliates. As a result, it is impossible for the Debtors to act impartially in the Collection Actions. The Collection Actions may require FLP to take actions against the Affiliates, their former clients. FLP is too close to the pre-petition conduct of the Debtors and the Affiliates to fairly represent the interests of all creditors.

The \$60,000 pre-petition payment from the Affiliates to FLP creates further problems. FLP may be sued by the Affiliates for a return of the payment, FLP will be a target of the Debtors' estate for the payment, and/or the Objecting Creditors will seek a refund of the payment. No matter the case, FLP cannot represent the interests of the Debtors' estate.

The \$60,000 payment also likely qualifies as a preference. It is unclear how and why the Affiliates replaced the Debtors' \$60,000 payment, and how that makes any difference since the Debtors own and control the Affiliates. That raises the question of whether there were other payments made by the Debtors to FLP within the 90-day preference period.

After Debtors returned the \$60,000 payment and the payment was replaced by the Affiliates, FLP became a creditor of the Debtors, since the Affiliates also received legal services from FLP and presumably owe legal fees for these services. The fact that FLP is a creditor of the Debtors is an additional reason why FLP is not disinterested and is disqualified from serving as counsel.

The Employment Application lacked the required disclosures. Specifically, the Employment Application failed to disclose the following information:

- 1) All services rendered by FLP to the Debtors and the Affiliates prior to the Petition Date;

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- 2) All fees billed and/or received by FLP pre-petition;
- 3) The work of FLP attorney Greg Yaris advising the Affiliates pre-petition;
- 4) The reason for the Affiliates' payment of the Debtors' legal bills for pre-petition work;
- 5) The source of the funds for the retainer paid to FLP;
- 6) Whether FLP has agreed to any variations from its customary billing arrangements; and
- 7) Whether the professionals included in the engagement have varied their rates based on the geographic location of the case.

Summary of FLP's Reply in Support of the Employment Application

FLP makes the following arguments and representations in their Reply to the Objecting Creditors' Opposition:

The Affiliates' pre-petition payment to FLP does give FLP an adverse interest to the estate. The Affiliates and the Debtors were co-liable to FLP for legal services that FLP had rendered to both the Debtors and the Affiliates prior to the Petition Date. By relieving the Debtors of their co-liability for these legal services, the Affiliates' payment to FLP extinguished any adverse interest that FLP might have to the estate,

Objecting Creditors mistakenly speculate that they have fraudulent transfer claims against FLP. To the contrary, FLP represented the Affiliates in response to the Objecting Creditors' judgment enforcement efforts. The Affiliates' payment to FLP was on account of these legal services.

FLP does not have an adverse interest to the estate as a result of its representation of the Affiliates prior to the Petition Date. Section 327(a) provides that a professional is not disqualified from employment solely because of the professional's representation of a creditor, unless there is an actual conflict of interest. Here there is no actual conflict of interest. Even if FLP continued to represent the Affiliates (which it does not), there would be no actual conflict, because the Affiliates are 100% owned by the Debtors, and therefore the interests of the Affiliates and the Debtors are aligned.

There is no merit to Objecting Creditors' contention that FLP did not make the required disclosures in its Employment Application. Contrary to the Objecting Creditors' arguments, neither Bankruptcy Rule 2014 nor LBR 2014 require FLP to disclose all services rendered by FLP to the Debtors and Affiliates prior to the Petition Date. Nor is FLP required to disclose all pre-petition services provided to the Affiliates by FLP attorney Greg Yaris. Mr. Yaris is a transactional real estate attorney

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who has represented the Affiliates and the Debtors for more than twenty years. The disclosure of all services he provided is not relevant to the Employment Application.

The Objecting Creditors contend that the pre-petition \$60,000 payment by the Affiliates was a preference. The Objecting Creditors are incorrect. The payment cannot be a preference because the funds were not property of the Debtors.

II. Findings and Conclusions

Section 327(a) provides that "the trustee, with the court's approval, may employ one or more attorneys ... that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." Section 101(14) defines "disinterested person" as "a person that is not a creditor, an equity security holder, or an insider; is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." Section 327(c) provides that "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest."

Within the context of §327(a), a professional holds an "interest adverse to the estate" if that professional "possess[es] or assert[s] any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) ... possess[es] a predisposition under circumstances that render such a bias against the estate." *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 688 (9th Cir. B.A.P. 2006).

The Objecting Creditors have failed to demonstrate that FLP holds an adverse interest to the estate. Pursuant to § 327(c), the mere fact that FLP represented the Affiliates pre-petition does not give rise to an adverse interest. To disqualify FLP from representing the Debtors, the Objecting Creditors must show the presence of an actual conflict. Objecting Creditors contend that FLP's representation of the Debtors "seems to be a continuation of the alter ego conduct that led to this bankruptcy." Opposition at 6. However, Objecting Creditors offer no concrete facts in support of this accusation. Objecting Creditors' speculation that some unspecified improprieties

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CONT... Michael Bonert and Vivien Bonert

Chapter 11

may exist is not enough to disqualify FLP from employment.

Nor is there merit to Objecting Creditors' contention that FLP received a preferential payment from the Debtors. During the 90-day preference period, FLP returned a \$60,000 payment that it had received from the Debtors. That payment was replaced by the Affiliates. The Affiliates' replacement of the payment was not preferential. The Affiliates owed FLP on account of legal services that FLP had provided to the Affiliates. By definition, a preferential payment must involve a transfer of property of the Debtors. *See* § 547(b) (providing that the trustee "may avoid any transfer of an interest of the debtor in property"). The Affiliates' payment to FLP, from their separate property, on account of legal services provided by FLP to the Affiliates, is not a preference.

The Court rejects the Objecting Creditors' argument that FLP has failed to make the necessary disclosure in support of the Employment Application. Bankruptcy Rule 2014 requires that an Employment Application contain the following disclosures:

The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

The Employment Application contains all the information required by Bankruptcy Rule 2014. The Objecting Creditors mistakenly contend that FLP is required to make voluminous disclosures not required by Bankruptcy Rule 2014, such as the pre-petition legal work performed by FLP attorney Greg Yaris for the Debtors and the Affiliates over a period of twenty years, the source of the funds for the retainer paid by the Debtors, and all fees billed by FLP to the Debtors pre-petition. Such extensive disclosures are not required under the Bankruptcy Code or Bankruptcy Rules and would be of no assistance to the Court in determining whether FLP holds an adverse interest to the estate.

Based upon the foregoing, the Objecting Creditors' Opposition is **OVERRULED**, and the Employment Application is **GRANTED**. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

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2:16-16496 JW Wireless Inc.

Chapter 7

#1.00 HearingRE: [67] Motion to Approve Compromise Under Rule 9019 with Proof of Service (Eastmond, Thomas)

Docket 67

Tentative Ruling:

11/19/2019

Hearing required. Prior to the hearing, all counsel shall meet and confer on whether the objecting creditor will present a bid, how the bid is communicated, bidding and overbid procedures and a continued hearing date.

In view of the timing exigencies, it is likely that only limited information might be available to the objecting creditor, but that should be discussed as well in advance of the hearing.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

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Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#2.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

Docket 11

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Represented By
Christian T Kim

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#3.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

Docket 11

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Represented By
Christian T Kim

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#3.10 Hearing
RE: [12] Motion to Dismiss Adversary Proceeding

FR. 11-13-19

Docket 12

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 19] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.

Pro Se

Joyce J. Hwang

Represented By
Christian T Kim

Nam Soo Hwang

Represented By
Christian T Kim

DOES 1 through 10

Pro Se

Hee Young Hwang

Represented By
Christian T Kim

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CONT... Keystone Textile, Inc.

Chapter 7

Young J. Hwang

Represented By
Christian T Kim

Young Jae Hwang

Pro Se

Hee Youn Hwang

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01393 Mastan, Chapter 7 Trustee v. Hwang et al

#3.20 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

FR. 11-13-19

Docket 18

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 30] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

In Young Hwang

Represented By
Christian T Kim

Twig & Twine, Inc.

Represented By
Michael H Yi

Danielle Steckler

Represented By
Michael H Yi

DOES 1 through 10

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By

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CONT... Keystone Textile, Inc.

Chapter 7

Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01404 Mastan, Chapter 7 Trustee v. Hwang et al

#4.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

Docket 18

***** VACATED *** REASON: CONTINUED 11-26-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Kenny Hwang

Represented By
Christian T Kim

Hyun Hwang

Represented By
Christian T Kim

Tri Blossom, LLC

Represented By
Christian T Kim

K2 America, Inc.

Represented By
Michael H Yi

Does 1-10, Inclusive

Pro Se

Mi Rae Hwang

Represented By
Christian T Kim

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

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CONT... Tbetty, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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Wednesday, November 20, 2019

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#5.00 HearingRE: [97] Application for Compensation First Interim Application For Award Of Compensation And Reimbursement Of Expenses Of Danning, Gill, Diamond & Kollitz, LLP As General Counsel For Chapter 7 Trustee; And Declarations Of Eric P. Israel And Brad D. Krasnoff In Support Thereof, with Proof of Service for Danning, Gill, Diamond & Kollitz LLP, General Counsel, Period: 7/27/2018 to 9/30/2019, Fee: \$40,793.00, Expenses: \$808.41.

Docket 97

Tentative Ruling:

11/19/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses as set forth below:

Fees: \$40,793 approved in full. [**Note 1**]

Expenses: \$808.41 approved in full.

Note 1: Once funds become available through the sale of real property located at 47 Oak Cliff Drive, Pomona, CA, the trustee shall pay applicant allowed fees and expenses, on an interim basis.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Debtor(s):

Rogelio Gonzalez

Represented By
Kerry P O'Brien

Joint Debtor(s):

Carol Gonzalez

Represented By
Kerry P O'Brien

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Sonia Singh
Eric P Israel

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 HearingRE: [3533] Application for Compensation Third Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for Nelson Hardiman LLP, Special Counsel, Period: 5/1/2019 to 8/31/2019, Fee: \$767,686.10, Expenses: \$32,886.18. (Shirley, Rosa)

Docket 3533

Tentative Ruling:

11/19/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On October 30, 2018, the Court entered an order authorizing the Debtors to employ Nelson Hardiman LLP ("Nelson Hardiman") as special healthcare regulatory counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Nelson Hardiman has submitted twelve Monthly Applications [Doc. Nos. 828, 879, 1131, 1341, 1596, 1906, 2262, 2466, 2616, 2797, 2951, and 3142], none of which have been opposed.

No objections to *Nelson Hardiman, LLP's Third Interim Fee Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period May 1, 2019 through August 31, 2019* [Doc. No. 3553] (the "Application")

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CONT... Verity Health System of California, Inc.

Chapter 11

have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$767,686.10

Expenses: \$32,886.18

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 HearingRE: [3520] Application for Compensation Third Interim Application of Dentons US LLP, as Debtors Counsel, for Fees and Expense Reimbursement for the Period May 1, 2019 through August 31, 2019; Declaration of John A. Moe, II for John A Moe II, Debtor's Attorney, Period: 5/1/2019 to 8/31/2019, Fee: \$3,149,146.82, Expenses: \$32,794.65.

Docket 3520

Tentative Ruling:

11/19/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On September 28, 2018, the Court entered an order approving the Debtors' application to employ Dentons US LLP ("Dentons") as its general bankruptcy counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Dentons has submitted twelve Monthly Applications [Doc. Nos. 853, 1001, 1178, 1443, 1676, 1956, 2265, 2473, 2642, 2824, 3004, and 3181], none of which have been opposed.

No objections to the *Third Interim Application of Dentons US LLP, as Debtors' Counsel, for Fees and Expense Reimbursement for the Period May 1, 2018 through August 31, 2019* [Doc. No. 3520] (the "Application") have been filed. Having

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reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$3,149,146.82

Expenses: \$32,794.65

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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Verity Health System of California, Inc.

Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

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#8.00 HearingRE: [3521] Motion to Assume Lease or Executory Contract To Silicon Valley Medical Development; Declaration of Richard G. Adcock In Support Thereof

Docket 3521

Tentative Ruling:

11/19/2019

The Motion was not served upon IDX Information Systems Corporation ("IDX"), the counterparty to the contract that the Debtors seek to assume and assign. The Debtors have been advised that IDX does not oppose the Motion.

By no later than **November 26, 2019**, the Debtors shall file a declaration from IDX confirming its non-opposition to the Motion. Subject to the filing of such a declaration, the Court is prepared to GRANT the Motion.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice [of Motion] and Motion to Approve Assumption and Assignment of a Certain Executory Contract to Silicon Valley Medical Development [Doc. No. 3521] (the "Motion")
 - a) Supplemental Notice Re [Motion] [Doc. No. 3641]
 - b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3520, 3521, 3524, 3525, 3526, 3527, 3528 and 3529 [Doc. No. 3640]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. Debtors VHS and Verity Medical Foundation ("VMF") move for an order authorizing the Debtors to assume and assign a contract with IDX (the "IDX Contract") to Silicon Valley Medical Development ("SVMD"). No opposition to the Motion is on file.

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On March 27, 2019, the Court authorized the Debtors to sell certain clinical assets to SVMD (the "SVMD Sale"). In connection with that sale, various executory contracts were assumed and assigned to SVMD. The IDX Contract was among certain vendor and IT agreements that were not assigned in connection with the SVMD Sale, in part because the IDX Contract was used by VMF to operate clinics not subject to the SVMD Sale.

The Debtors, SVMD, and IDX have engaged in discussions regarding the assignment of the IDX Contract to SVMD. IDX has agreed to the assignment of the IDX Contract. SVMD has agreed to pay a cure amount of up to \$69,187.74 to IDX as a condition of assumption and assignment.

II. Findings and Conclusions

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

The Court approves the assumption and assignment of the IDX Contract to SVMD. Assignment of the IDX Contract is in the best interests of the estate because it will complete the SVMD Sale as originally contemplated.

Based upon the foregoing, the Court is prepared to GRANT the Motion, subject to the filing of a declaration from IDX confirming its non-opposition to the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Chapter 11

#9.00 Hearing
RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19; 10-15-19; 10-23-19; 11-6-19

Docket 2995

***** VACATED *** REASON: Cont'd to 11/26/2019 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 20, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 HearingRE: [3511] Application for Compensation Third Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period May 1, 2019 - August 31, 2019 for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 5/1/2019 to 8/31/2019, Fee: \$595,743.51, Expenses: \$8,154.59.

Docket 3511

Tentative Ruling:

11/19/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 14, 2018, the Court entered an order authorizing the Debtors to employ Pachulski Stang Ziehl & Jones LLP ("PSZJ") as conflicts counsel. Pursuant to the procedures set forth in the Fee Procedures Order, PSZJ has submitted eleven Monthly Applications [Doc. Nos. 868, 1113, 1335, 1618, 1854, 2243, 2426, 2586, 2765, 2916, and 3078], none of which have been opposed.

No objections to *Pachulski Stang Ziehl & Jones LLP's Third Interim Application for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period May 1, 2019 through August 31, 2019* [Doc. No. 3511] (the "Application") have been filed. Having reviewed the Application, the Court approves,

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on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$595,743.51

Expenses: \$8,154.59

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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Steven J Kahn

Nicholas A Koffroth

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#11.00 Hearing

RE: [3484] *Debtors' Motion to Disallow Claim No. 6106 Filed by Stanley Clay Against Verity Health System of California, Inc. (Case No. 2:18-bk-20151-ER);*

Docket 3484

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 6106 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Motion to Disallow Claim No. 6106 Filed by Stanley Clay Against Verity Health System of California, Inc. [Doc. Nos. 3426 and 3484 (re-filed as Doc. No. 3484 solely to correct issue with PDF file)] (the "Claim Objection")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3424, 3425, 3426 and 3434 [Doc. No. 3568]
- 2) No opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Claim No. 6106, Asserted by Stanley Clay

On April 1, 2019, Stanley Clay (the "Claimant") filed Proof of Claim No. 6106 ("Claim 6106" or the "Claim"). Claim 6106 seeks a recovery in the amount of \$1,744,097.40. The Claimant did not check a box indicating which Debtor the Claim is asserted against. The Claimant asserts that the entire Claim is entitled to priority as

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a contribution to an employee benefit plan. The Claimant provides no other details on the basis or nature of the Claim.

Summary of the Debtors' Objection to Claim No. 6106

Debtors object to the allowability of Claim 6106. No opposition to the Claim Objection is on file. The Debtors make the following arguments in support of the Claim Objection:

Claimant has failed to provide sufficient evidence in support of the allowability of Claim. The Claimant has not attached any supporting documents or addendum to the Claim.

To the extent the Claim is intended to relate to the pension plan guaranteed by the Pension Benefit Guaranty Corporation (the "PBGC"), all pension related claims are covered by the proof of claim filed by the PBGC and the treatment of the PBGC's claim under the Debtors' Chapter 11 Plan. There is no need to allow an individual pension claim for the Claimant.

In addition, any claim for an employee benefit plan would be entirely or largely a general unsecured claim. The priority amount of any such claim would be capped at \$12,850 under § 507(a)(5).

II. Findings and Conclusions

A. Notice of the Claim Objection was Sufficient

Bankruptcy Rule 3007 requires that a claimant receive not less than 30 days' notice of a claim objection. Here, the Claim Objection was filed on October 21, 2019, but was not served upon Claimant by the Debtors' claims and balloting agent until October 22, 2019—only 29 days prior to the date of the hearing.

Bankruptcy Rule 9006(c) allows the Court to reduce the notice period under Rule 3007 "in its discretion with or without motion or notice" The Court finds that Claimant was not prejudiced by receiving only 29 days' notice of the Claim Objection, as opposed to the 30 days required under Rule 3007. Claimant has not filed any opposition to the Claim Objection.

The Court finds it appropriate to reduce the notice period under Rule 3007 by one day. Therefore, notice of the Claim Objection was sufficient.

B. The Claim is Disallowed

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance

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with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

The Debtors have provided sufficient evidence to overcome the presumption of validity created by the Claim. The Debtors have provided a declaration from their Chief Executive Officer, Richard Adcock, denying the allegations in the Claim. Adcock Decl. at ¶ 4.

The Claimant has failed to respond to the Claim Objection. Therefore, the Claimant has failed to carry his ultimate burden in support of the validity of the Claim.

In addition, the Claim is duplicative of the proof of claim filed by the PBGC, and is appropriately disallowed on that ground as well.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 6106 is DISALLOWED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#12.00 Hearing

RE: [3485] *Debtors' Motion to Disallow Claim No. 3496 Filed by Harry Mittelman Against Verity Health System of California, Inc. (Case No. 2:18-bk-20151-ER);*

Docket 3485

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 3496 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Motion to Disallow Claim No. 3496 Filed by Harry Mittelman Against Verity Health System of California, Inc. [Doc. Nos. 3424 and 3485 (re-filed as Doc. No. 3487 solely to correct issue with PDF file)] (the "Claim Objection")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3424, 3425, 3426 and 3434 [Doc. No. 3568]
- 2) No opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Claim No. 3496, Asserted by Harry Mittelman

On March 18, 2019, Harry Mittelman (the "Claimant") filed Proof of Claim No. 3496 ("Claim 3496" or the "Claim"). Claim 3496 seeks a recovery in the amount of either \$500,000 or \$2 million (the Claim contains inconsistent information on the amount of the claim being asserted). The Claimant did not check a box indicating which Debtor the Claim is asserted against. The basis for the Claim is "[u]npaid debts

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to vendors and mismanagement of the Los Altos Surgery Center, directly contradicting + not performing on orders of the General Member of the Los Altos Surgery Center—Harry Mittelman, President, Los Altos Surgery Center Inc.”

Claimant states that he is “not sure” whether the Claim is secured and does not specify any asserted collateral. Claimant lists the value of the unspecified collateral as \$2 million, the amount secured as “?” and the amount unsecured as “up to \$2 million.”

Claimant asserts priority status under the priorities for (1) wages, salaries, and commissions, (2) taxes and penalties owed to governmental units, and (3) contributions to an employee benefit plan. Claimant does not list the amounts that he asserted are entitled to priority.

Summary of the Debtors’ Objection to Claim No. 3496

Debtors object to the allowability of Claim 3496. No opposition to the Claim Objection is on file. The Debtors make the following arguments in support of the Claim Objection:

Claimant has failed to provide sufficient evidence in support of the allowability of Claim. Claimant did not provide an addendum, any supporting documents, or any other details in support of the Claim.

The Claim lacks factual merit. The Claimant has provided no basis or calculation for his alleged damages.

The Claim is not entitled to priority status and Claimant has provided no information or documentation supporting priority status.

The Claim is not secured and Claimant has provided no information or documentation supporting secured status.

II. Findings and Conclusions

A. Notice of the Claim Objection was Sufficient

Bankruptcy Rule 3007 requires that a claimant receive not less than 30 days’ notice of a claim objection. Here, the Claim Objection was filed on October 21, 2019, but was not served upon Claimant by the Debtors’ claims and balloting agent until October 22, 2019—only 29 days prior to the date of the hearing.

Bankruptcy Rule 9006(c) allows the Court to reduce the notice period under Rule 3007 "in its discretion with or without motion or notice" The Court finds that Claimant was not prejudiced by receiving only 29 days’ notice of the Claim

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Objection, as opposed to the 30 days required under Rule 3007. Claimant has not filed any opposition to the Claim Objection.

The Court finds it appropriate to reduce the notice period under Rule 3007 by one day. Therefore, notice of the Claim Objection was sufficient.

B. The Claim is Disallowed

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

The Debtors have provided sufficient evidence to overcome the presumption of validity created by the Claim. The Debtors have provided a declaration from their Chief Executive Officer, Richard Adcock, denying the allegations in the Claim. Adcock Decl. at ¶ 2.

The Claimant has failed to respond to the Claim Objection. Therefore, the Claimant has failed to carry his ultimate burden in support of the validity of the Claim.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 3496 is DISALLOWED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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**United States Bankruptcy Court
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#13.00

Hearing

RE: [3486] *Debtors' Motion to Disallow Claim No. 5551 Filed by Doris Thompson Against Verity Health System of California, Inc. (Case No. 2:18-20151-ER)*;

Docket 3486

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 5551 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Motion to Disallow Claim No. 5551 Filed by Doris Thompson Against Verity Health System of California, Inc. [Doc. Nos. 3425 and 3486 (re-filed as Doc. No. 3486 solely to correct issue with PDF file)] (the "Claim Objection")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3424, 3425, 3426 and 3434 [Doc. No. 3568]
- 2) No opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Claim No. 5551, Asserted by Doris Thompson

On April 1, 2019, Doris Thompson (the "Claimant") filed Proof of Claim No. 5551 ("Claim 5551" or the "Claim"). Claim 5551 seeks a recovery in the amount of \$50 million against Debtors VHS and St. Vincent Medical Center. The basis for the Claim is "sodomized, (2) rapes, unknown surgery and unlawful surgery, given Drugs

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in I.V. I seen the Doctors involved.”

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Summary of the Debtors' Objection to Claim No. 5551

Debtors object to the allowability of Claim 5551. No opposition to the Claim Objection is on file. The Debtors make the following arguments in support of the Claim Objection:

Claimant has failed to provide sufficient evidence in support of the allowability of Claim. The only evidence in support of the Claim is a police report and a handwritten declaration.

The Claim lacks factual merit. The Debtors have searched their books, records, and occurrence reports and have not found any evidence supporting the existence of the Claim.

The claim is time-barred. In California, the statute of limitations for a personal injury claim is two years from the date of discovery of the injury. *See* Cal. Civ. Proc. Code § 335.1. The alleged rape occurred nearly six years before the Petition Date and the alleged incident was not reported to the Los Angeles Police Department until over two and a half years after the alleged incident.

There is no sign that Claimant has engaged an attorney or expert witness or filed suit to pursue the Claim at any time since 2012. Therefore, the Claim should be disallowed for laches.

II. Findings and Conclusions

A. Notice of the Claim Objection was Sufficient

Bankruptcy Rule 3007 requires that a claimant receive not less than 30 days' notice of a claim objection. Here, the Claim Objection was filed on October 21, 2019, but was not served upon Claimant by the Debtors' claims and balloting agent until October 22, 2019—only 29 days prior to the date of the hearing.

Bankruptcy Rule 9006(c) allows the Court to reduce the notice period under Rule 3007 "in its discretion with or without motion or notice" The Court finds that Claimant was not prejudiced by receiving only 29 days' notice of the Claim Objection, as opposed to the 30 days required under Rule 3007. Claimant has not filed any opposition to the Claim Objection.

The Court finds it appropriate to reduce the notice period under Rule 3007 by one day. Therefore, notice of the Claim Objection was sufficient.

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B. The Claim is Disallowed

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Claim 5551 is not enforceable under California law because it is time-barred. Cal. Civ. Proc. Code § 335.1 provides that "[a]n action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another" must be commenced within two years of the date of discovery of the wrongful conduct. The alleged rape occurred on October 7, 2012. Claimant did not file a police report until nearly 2.5 years after the alleged incident and has still not filed suit against the Debtors. Claimant's failure to pursue her rights prior to expiration of the statute of limitations requires the Court to disallow the Claim.

In addition, the Debtors have provided sufficient evidence to overcome the presumption of validity created by the Claim. The Debtors have provided a declaration from their Chief Executive Officer, Richard Adcock, which states that the Debtors have searched their books, records, and occurrence reports and have found no

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evidence supporting the existence of the Claim. Adock Decl. at ¶ 4.

The Claimant has failed to respond to the Claim Objection. Therefore, the Claimant has failed to carry her ultimate burden in support of the validity of the Claim.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 5551 is DISALLOWED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Verity Health System of California,

Represented By

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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00

Hearing

RE: [3487] Debtors' Motion to Disallow Claim No. 6561 Filed by Angela Von Parrish Against St. Francis Medical Center of Lynwood Foundation (Case No. 2:18-bk-20178-ER);

Docket 3487

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 6561 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Motion to Disallow Claim No. 6561 Filed by Angela Von Parrish Against St. Francis Medical Center of Lynwood Foundation [Doc. Nos. 3423 and 3487 (re-filed as Doc. No. 3487 solely to correct issue with PDF file)] (the "Claim Objection")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3422 and 3423 [Doc. No. 3509]
- 2) No opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Claim No. 6561, Asserted by Angela Von Parrish

On April 2, 2019, Angela Von Parrish (the "Claimant") filed Proof of Claim No. 6561 ("Claim 6561" or the "Claim"). Claim 6561 seeks a recovery of \$1 million

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against Debtor St. Francis Medical Center of Lynwood Foundation. The basis for the Claim is “personal injury, malpractice, neglect of statutory duty.”

Summary of the Debtors’ Objection to Claim No. 6561

Debtors object to the allowability of Claim 6561. No opposition to the Claim Objection is on file. The Debtors make the following arguments in support of the Claim Objection:

Claimant has failed to provide sufficient evidence in support of the allowability of Claim. Claimant did not provide an addendum, any supporting documents, or any other details in support of the Claim.

The Claim should be disallowed under Civil Rule 12(b)(6) or its state law equivalent. The Claim does not contain sufficient factual allegations to state a viable and legally recognized cause of action.

The Claim lacks factual merit. The Debtors have searched their books, records, and occurrence reports and have not found any evidence supporting the existence of the Claim. The named Debtor in the Claim, St. Francis Medical Center of Lynwood Foundation, does not deliver medical services and would not be involved in any alleged “personal injury, malpractice, or neglect of statutory duty.” Claimant has provided no basis or calculation for her alleged damages of \$1 million.

The Claim does not include an authorized signature. Claimant’s alleged agent, Samuel Kenneth Porter, signed the Claim, but there is no written power of attorney attached to the Claim showing that Mr. Porter had authority to sign the Claim on behalf of the Claimant.

There is no sign that Claimant has engaged an attorney or expert witness or filed suit to pursue the Claim at any time since the beginning of 2014. Therefore, the Claim should be disallowed for laches.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable

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issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

The Debtors have provided sufficient evidence to overcome the presumption of validity created by the Claim. The Debtors have provided a declaration from their Chief Executive Officer, Richard Adcock, which states that the Debtors have searched their books, records, and occurrence reports and have found no evidence supporting the existence of the Claim. Adcock Decl. at ¶ 4. The Adcock Declaration further establishes that the named Debtor in the Claim, St. Francis Medical Center of Lynwood Foundation, does not deliver medical services and therefore could not have been involved in any alleged "personal injury, malpractice or neglect of statutory duty." *Id.*

The Claimant has failed to respond to the Claim Objection. Therefore, the Claimant has failed to carry her ultimate burden in support of the validity of the Claim.

In addition, the Claim is defective because it has not been signed by the Claimant. Although the Claim has been signed by Samuel Kenneth Porter, allegedly in his capacity as the Claimant's agent, there is no evidence attached indicating that Mr. Porter is in fact the Claimant's agent.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 6561 is DISALLOWED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Central District of California
Los Angeles
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#15.00 Hearing

RE: [3488] *Debtors' Motion to Disallow Claim No. 2940 Filed by Marc Levy Against Verity Medical Foundation (Case No. 2:18-bk-20169-ER)*;

Docket 3488

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Claim Objection is SUSTAINED and Claim 2940 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Motion to Disallow Claim No. 2940 Filed by Marc Levy Against Verity Medical Foundation [Doc. Nos. 3422 and 3488 (re-filed as Doc. No. 3488 solely to correct issue with PDF file)] (the "Claim Objection")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3422 and 3423 [Doc. No. 3509]
- 2) No opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Claim No. 2940, Asserted by Marc Levy

On February 28, 2019, Marc Levy (the "Claimant") filed Proof of Claim No. 2940 ("Claim 2940" or the "Claim"). Claim 2940 seeks a recovery of \$500 million against Debtor Verity Medical Foundation ("VMF"). Claimant alleges that "[i]n 2014, after spending one full year against my will in a California locked mental institution, called

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‘California Psychiatric Institutions,’ in Delhi, CA, I was placed by my San Mateo County, CA conservator in Verity Health Foundation’s Psynergy Program’s ‘Nueva Vista’ residential treatment program in Morgan Hill, CA against my will.” Claimant further alleges that “he was forced to stay at Nueva Vista, against my will, from 2014 to 2016.”

Summary of the Debtors’ Objection to Claim No. 2940

Debtors object to the allowability of Claim 2940. No opposition to the Claim Objection is on file. The Debtors make the following arguments in support of the Claim Objection:

Claimant has failed to provide sufficient evidence in support of the allowability of Claim. The only evidence in support of the Claim is a one-page addendum.

The Claim should be disallowed under Civil Rule 12(b)(6) or its state law equivalent. The Claim does not contain sufficient factual allegations to state a viable and legally recognized cause of action.

The claim is time-barred. In California, the statute of limitations for a personal injury claim is two years from the date of discovery of the injury. *See* Cal. Civ. Proc. Code § 335.1. The allegedly wrongful conduct began in 2014, yet Claimant took no action to enforce his rights until the filing of Claim 2940.

The Claim lacks factual merit. The Debtors have searched their books, records, and occurrence reports and have not found any evidence supporting the existence of the Claim.

There is no sign that Claimant has engaged an attorney or expert witness or filed suit to pursue the Claim at any time since the beginning of 2014. Therefore, the Claim should be disallowed for laches.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280

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(9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Claim 2940 is not enforceable under California law because it is time-barred. Cal. Civ. Proc. Code § 335.1 provides that "[a]n action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another" must be commenced within two years of the date of discovery of the wrongful conduct. The Claim's allegations that the Claimant was wrongfully detained against his will fall within the scope of Cal. Civ. Proc. Code § 335.1. The allegedly wrongful conduct commenced in 2014. There is no indication that the Claimant took any legal action to enforce his rights prior to the filing of the Claim Objection on February 28, 2019. Claimant's failure to pursue his rights prior to expiration of the statute of limitations requires the Court to disallow the Claim.

In addition, the Debtors have provided sufficient evidence to overcome the presumption of validity created by the Claim. The Debtors have provided a declaration from their Chief Executive Officer, Richard Adcock, which states that the Debtors have searched their books, records, and occurrence reports and have found no evidence supporting the existence of the Claim. Adcock Decl. at ¶ 4.

The Claimant has failed to respond to the Claim Objection. Therefore, the Claimant has failed to carry his ultimate burden in support of the validity of the Claim.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 2940 is DISALLOWED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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#16.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19

Docket 2157

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
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Chapter 11

#17.00 Hearing
RE: [3453] Jeffer Mangels Butler & Mitchell LLPs First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses, Special Counsel, Period: 5/1/2019 to 8/31/2019, Fee: \$612,533.50, Expenses: \$9,398.57.

Docket 3453

Tentative Ruling:

11/19/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On August 7, 2019, the Court entered an order approving the Debtors' application to employ Jeffer Mangels Butler & Mitchell LLP ("JMBM") as the Debtors' special labor and employment counsel. Pursuant to the procedures set forth in the Fee Procedures Order, JMBM has submitted two Monthly Applications [Doc. Nos. 2944 and 3139], neither of which has been opposed.

No objections to *Jeffer Mangels Butler & Mitchell LLP's First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses* [Doc. No. 3453] (the "Application") have been filed. Having reviewed the

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Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$612,533.50

Expenses: \$9,398.57

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

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Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

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#18.00 Hearing

RE: [3489] Application for Compensation for Nelson Hardiman LLP, Special Counsel, Period: 9/1/2019 to 9/30/2019, Fee: \$170,808.32, Expenses: \$10.46.

Docket 3489

***** VACATED *** REASON: CALENDARED IN ERROR.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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2:18-20151 Verity Health System of California, Inc.

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#19.00 Hearing

RE: [3519] Application for Compensation Berkeley Research Group, LLC's Third Interim Fee Application For Allowance And Payment Of Interim Compensation And Reimbursement Of Expenses For The Period May 1, 2019 Through August 31, 2019 for Berkeley Research Group LLC, Financial Advisor, Period: 5/1/2019 to 8/31/2019, Fee: \$3,528,358.00, Expenses: \$308,742.79.

Docket 3519

Tentative Ruling:

11/19/2019

On October 25, 2018, the Court entered an *Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 661], and on October 16, 2018, the Court entered an *Amended Order on Debtors' Motion Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 826] (the "Fee Procedures Order"). **[Note 1]** Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court. **[Note 2]** The failure to object to a Monthly Application does not result in a waiver of a party's ability to object to an interim fee application.

On November 7, 2018, the Court entered an order approving the Debtors' application to employ Berkeley Research Group, LLC ("BRG") as the Debtors' financial and restructuring advisor. Pursuant to the procedures set forth in the Fee Procedures Order, BRG has submitted twelve Monthly Applications [Doc. Nos. 883, 1099, 1203, 1392, 1783, 1958, 2334, 2438, 2665, 2842, 3029, and 3171], none of which have been opposed.

No objections to *Berkeley Research Group, LLC's Third Interim Fee Application*

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for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Period May 1, 2019 through August 31, 2019 [Doc. No. 3519] (the "Application") have been filed. Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate:

Fees: \$3,528,358.00

Expenses: \$308,742.79

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The initial Fee Procedures Order did not list Nelson Hardiman, LLP, the Debtors' healthcare regulatory counsel, as a party entitled to file Monthly Fee Applications. The Amended Fee Procedures Order corrected this omission and is otherwise identical to the initial Fee Procedures Order.

Note 2

Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), which has been employed as the Debtors' conflicts counsel, is authorized to receive payment of fees and expenses every four months, instead of every month.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

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Los Angeles
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Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

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#20.00 Hearing

RE: [2579] Amended Motion (related document(s): 2567 Motion to Assume Lease or Executory Contract Notice of Motion and Motion For Specified Period to Assume or Reject Executory Contract Between St. Vincent Medical Center and Seoul Medical Group, Inc.; Supporting Memorandum of Points and Authorities and filed by Creditor Seoul Medical Group Inc) Notice Of Motion And Amended Motion For Specified Period To Assume Or Reject Executory Contract Between St. Vincent Medical Center And Seoul Medical Group, Inc.; Supporting Memorandum Of Points And Authorities And Declarations (Orantes, Giovanni)

FR. 7-10-19; 8-7-19; 9-4-19; 10-8-19; 10-22-19; 11-6-19

Docket 2579

Tentative Ruling:

11/19/2019

Appearances required.

The Court has approved multiple continuances of this matter to enable the parties to negotiate a settlement. The most recent continuance was granted by way of an order entered on November 6, 2019 [Doc. No. 3547] (the "Order"). The Order provided that "[n]o further continuances will be granted absent a showing of compelling circumstances," and directed the parties to file a Status Report describing the progress made toward memorializing the settlement.

The Status Report filed by the parties contains little to assure the Court that the parties are making meaningful progress toward finalizing a settlement. In relevant part, the Status Report provides: "[W]hile the Purchaser and Seoul Medical Group, Inc. have continued to make progress toward documenting their agreement, they need more time to finalize such documentation because the parties are still reviewing a proposed amendment to the Risk Sharing Agreement and have not yet reached a final decision." Status Report at ¶ 9.

The parties shall appear to provide the Court with further information regarding the reasons why they have been unable to reach a settlement. The initial hearing on this matter took place on July 10, 2019. In the Court's view, the parties have had more than sufficient time to conclude this matter.

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Chapter 11

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Chapter 11

#21.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19; 10-23-19;
10-30-19; 11-6-19; 11-13-19

Docket 0

***** VACATED *** REASON: Cont'd to 11/25/2019 at 10:00am**

Tentative Ruling:

11/12/2019

No appearances required. The Court has entered an order approving a stipulated continuance of this hearing to November 20, 2019, at 10:00 a.m.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
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2:16-25822 Javier H. Pulido

Chapter 7

#100.00 Trustee - David M. Goodrich

Hearing re [30] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

11/19/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$1,504.60 [*see* Doc. No. 29]

Total Expenses: \$89.50 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Javier H. Pulido

Represented By
Joseph L Pittera

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

11:00 AM

2:18-22144 Hakop Jack Aivazian

Chapter 7

#101.00 HearingRE: [130] Motion to approve compromise Trustee's Notice of Motion and Motion to Approve Compromise With Hakop Jack Aivazian; Memorandum of Points and Authorities, Declaration of Brad D. Krasnoff and Request for Judicial Notice in Support Thereof, With Proof of Service (Attachments: # 1 Exhibits 1, A, and A-1 # 2 Proof of Service) (Singh, Sonia)

Docket 130

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Motion is GRANTED, and the Settlement Agreement is APPROVED.

Pleadings Filed and Reviewed

1. Trustee's Motion to Approve Compromise with Hakop Jack Aivazian [Doc. No. 130] (the "Motion")
2. Notice of Trustee's Motion to Approve Compromise with Hakop Jack Aivazian [Doc. No. 131]
3. Debtor's Original Schedules [Doc. No. 14]
4. Tentative Ruling regarding Motion to Dismiss Debtor (the "Dismissal Motion") [Doc. No. 67]
5. Order Denying Motion to Dismiss [Doc. No. 77]
6. Debtor's Amended Schedules [Doc. No. 127]
7. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor Hakop Jack Aivazian (the "Debtor") commenced a voluntary Chapter 11 petition on October 16, 2018. Debtor oversaw the administration of the Chapter 11 case, until this Court entered an order converting this matter to Chapter 7 on January 17, 2019 [Doc. No. 31]. Brad D. Krasnoff was subsequently appointed as Chapter 7 trustee (the "Trustee") [Doc. No. 33].

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Central District of California
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CONT...

Hakop Jack Aivazian

Chapter 7

On his Schedule A/B, the Debtor claims an ownership interest as joint tenant with his non-filing spouse in a real estate parcel, improved with a multi-unit apartment building, located at 1728-1730-1734 E. Woodbury Avenue, Pasadena, California 91104 (the "Property") with an estimated value of \$1.54 million [Doc. No. 14]. Debtor's revised schedules [Doc. No. 127] indicate the Property is encumbered with liens totaling \$744,060. *See* Motion, Ex. 1 [Settlement Agreement], ¶ E. Debtor's Amended Schedule G further alludes to the existence of four rental agreements between Debtor and third parties regarding the Property.

On April 19, 2019, the Debtor motioned the Court for the dismissal of the instant petition given the anticipated refinance of the Property for a loan amount of \$1,084,000 [the "Dismissal Motion"], which would have yielded Debtor a net sum of \$162,103.05 [Doc. No. 50]. The Court denied the Dismissal Motion, concluding such relief was not in the best interest of creditors as Trustee was in the process of evaluating whether the Property contained any administrable equity [Doc. No. 67]. In addition, the Court notes that the claims bar date elapsed on August 5, 2019: claims were filed in the total amount of \$1,370,912.11, of which \$1,352,213.41 were secured and \$18,698.70 were unsecured claims. Motion at 3.

As set forth in the Motion and Exhibit 1 attached thereto, the Trustee and Debtor reached a resolution concerning the Property, and presently seek approval of their settlement agreement (the "Settlement Agreement"), providing in relevant part that:

1. The Debtor shall tender the sum of \$162,103.05 (the "Compromise Sum") to the Trustee within ninety (90) days from the entry of an order approving the Settlement Agreement;
2. The Trustee agrees to cooperate with the Debtor's plan to refinance the Property by, *inter alia*, depositing into a refinancing escrow account a quitclaim deed to the Property in exchange for the Compromise Sum;
3. In the event that Debtor fails to tender the Compromise Sum, the Debtor stipulates to the entry of a judgment to sell the Property as an estate asset without further litigation (the "Stipulated Judgment") (*see* Motion, Ex. A);
4. Upon timely and full payment of the Compromise Sum, the Stipulated Judgment shall become null and void;
5. The Debtor shall waive the right to file a proof of claim against any portion of the Compromise Sum; and
6. After all administrative expenses and allowed claims are satisfied, the Trustee

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CONT...

Hakop Jack Aivazian

Chapter 7

agrees to pay Debtor any surplus remaining in the Compromise Sum.

Motion at 4-5; Ex. 1.

Given that the Settlement Agreement will generate immediate estate funds, while mitigating administrative expense, the Trustee submits that the proposed settlement is reasonable, adequate under the circumstances, and in the best interest of creditors pursuant to the factors enumerated in *A & C Properties*.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. In the Ninth Circuit, courts consider the following factors in determining the fairness, reasonableness and adequacy of a proposed settlement agreement:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986).

"Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851 (B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

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CONT... **Hakop Jack Aivazian**

Chapter 7

Here, the Court finds that the Settlement Agreement is adequate, fair and reasonable, and in the best interest of the estate in accordance with the *A&C Properties* factors. Accordingly, the Trustee expresses confidence that estate would likely prevail in litigation, however not without delay and legal expenses. Even if the Property were recovered, any realized equity available to creditors would be further diminished to satisfy capital gain taxes due upon sale. Furthermore, the Court notes that the Settlement Agreement will generate a sizeable pool of funds for the estate upon the refinancing of the Property. Even if the Debtor fails to deliver payment of the Compromise Sum as accorded, the Settlement Agreement provides an expedient resolution through the entry of the Stipulated Judgment. For this reason, the Settlement Agreement adequately considers the interests of creditors, and it reduces the likelihood of litigation, thereby avoiding unnecessary costs, delays, and uncertainties. In sum, the Court determines that the Trustee satisfied the first, third, and fourth *A & C* factors. The factual record is not sufficiently developed to enable the Court to reach a determination as to the second factor. Therefore, the majority of *A & C* factors weigh in favor of the Settlement Agreement.

Moreover, the Court has not received any objection to the Motion. Accordingly, pursuant to LBR 9013-1(h), the Court presumes all interested parties consent to approval of the Settlement Agreement.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED, and the Settlement Agreement is APPROVED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Hakop Jack Aivazian

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hakop Jack Aivazian

Represented By
Guy R Bayley

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 20, 2019

Hearing Room 1568

11:00 AM

2:19-21593 C & F Sturm, LLC

Chapter 11

#102.00 HearingRE: [8] Application to Employ Northcap Commercial as Real Estate Broker
Declarations Christina M. De Musee and Glenda Shaw; Statement of Disinterestedness

Docket 8

Tentative Ruling:

11/19/2019

For the reasons set forth below, the Employment Application is GRANTED with employment effective as of October 4, 2019.

Pleadings Filed and Reviewed

1. Application by Chapter 11 Debtor and Debtor in Possession to Employ Northcap Commercial [sic] as Debtor's Real Estate Broker [Doc. No. 8] (the "Employment Application")
2. Palco Promotions, Inc.'s Objection to Employment Application and Request for Hearing [Doc. No. 14] (the "Objection")
3. Notice of Hearing on Application for Employment of Real Estate Broker [Doc. No. 17] (the "Notice of Hearing")
4. Applicant Reply to Creditor's Objection to the Motion to Employ Real Estate Agent (the "Reply") [Doc. No. 20]

I. Facts and Summary of Pleadings

C & F Sturm, LLC (the "Debtor") filed a voluntary chapter 11 petition on October 1, 2019. On October 7, 2019, the Debtor filed an employment application to retain the services of Northcap Commercial (the "Real Estate Broker") to market and sell commercial real estate in Las Vegas, Nevada, pursuant to 11 U.S.C. §§ 327(a) and 330, effective as of October 4, 2019 (the "Employment Application") [Doc. No. 8]. Pursuant to the Employment Application, the services by the Real Estate Broker will consist of marketing and selling two real estate parcels generally described as 511 and 515 Las Vegas Boulevard South, Las Vegas, NV (the "Properties"), with a listing price of \$1,795,000. Employment Application, Ex. 1. Upon sale of the Properties, the Real Estate Broker will be compensated with a 6% commission of the final gross

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CONT... C & F Sturm, LLC

Chapter 11

purchase price; final compensation will be governed under §328(a). Employment Application at 1, ¶¶ 6-7; *see* Ex. A at 5 [the Declaration of Glenda K. Shaw].

Creditor Palco Promotions, Inc. (the "Creditor") filed an objection in response to the Employment Application and requested a hearing thereon [Doc. No. 14] (the "Objection"). Notably, the Objection articulates no contentions whatsoever against the Real Estate Broker's competence, fees, effective date of employment, or disinterestedness. Instead, the Creditor orients its objection squarely against the Debtor, contending that this bankruptcy petition was not filed in good faith. Specifically, Creditor's principal, Louis Palazzo, attests that the proposed listing price for the Properties of \$1,795,000 is substantially lower than the minimum sales price of \$2,100,000 mandated under a 2012 settlement agreement (the "2012 Settlement Agreement") executed by Christina M. De Musee, acting as the Debtor's manager [Note 1]. Declaration of Louis Palazzo ("Palazzo Decl."), ¶¶ 3-6; Ex. A. Pursuant to said settlement agreement, the Creditor asserts that it was entitled to 50% of any sales proceeds above \$1,400,000, theoretically aggregating to a \$350,000 payout based on a \$2,100,000 purchase price. Palazzo Decl., ¶¶ 3-6. Because the Broker Listing Agreement (*see* Employment Application, Ex. A) lists the Properties' purchase price at \$1,795,000, the Creditor argues it stands to lose \$152,500 if the sale is consummated on these terms. However, it is unclear what relief is sought in the Objection—the Creditor questions whether Debtor truly needs to retain bankruptcy counsel and requests that the Court "apply the necessary scrutiny...to the instant bankruptcy petition." Palazzo Decl., ¶ 8.

On November 5, 2019, the Debtor filed the Reply. In response to the Objection, the Debtor counters that the Employment Application should be approved given that Creditor has failed to offer any reason why the Real Estate Broker is not qualified or otherwise eligible for employment.

The Debtor posits that the gravamen of the Objection boils down to the listing price. The Debtor further explains that the parties intended to sell the Properties years ago pursuant to a 2007 settlement agreement, which is referenced in the 2012 Settlement Agreement. *See* Reply at 2; Objection, Ex. A (2012 Settlement Agreement) at 1, Section II(1)(a). Based on the 2012 Settlement Agreement, the Debtor asserts that the parties agreed to take turns marketing the Properties in 6-month intervals until a sale was finalized. However, according to the Debtor, the

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CONT... C & F Sturm, LLC

Chapter 11

Creditor has not hired any brokers and does not intend to sell the Properties, thereby forcing a foreclosure sale. Reply at 2. As the Properties have since failed to sell at the \$2,100,000 price, and because the Debtor has absorbed burdensome maintenance expenses, it intends to proceed with the sale of the Properties. *Id.* at 3. In sum, the Debtor submits that the arguments raised in the Objection are better suited in response to a sale motion.

Finally, with respect to the bad faith allegations, the Debtor claims that it sought bankruptcy protections in good faith as it has a negative cash flow and real properties that are not generating any income.

II. Findings of Fact and Conclusions of Law

Pursuant to 11 U.S.C. § 327(a), a debtor-in-possession may employ a professional or professional organization that does not hold or represent an interest adverse to the estate, and that qualifies as a disinterested person, to represent or assist the debtor-in-possession in carrying out the debtor-in-possession duties under Title 11. Pursuant to Bankruptcy Rule 2014, an employment application brought under § 327 must state:

the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a). Additionally, LBR 2014-1(b)(3)(A)-(E) sets forth a list of information to be included in any notice of an employment application.

Having reviewed the Employment Application, the Declaration of Christina M. De Musee, the Brokerage Listing Agreement, the Declaration of Glenda K. Shaw, the Statement of Disinterestedness, and the Notice of Hearing, the Court determines that the Employment Application contains sufficient information to satisfy the requirements of Bankruptcy Rule 2014 and LBR 2014-1(b)(3). The Court further

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Chapter 11

finds that the arguments raised in the Objection do not challenge the veracity or sufficiency of the information supporting the Employment Application. The Objection essentially pertains to facts predating the Debtor's engagement with the Real Estate Broker. At this stage, the Court will not make any substantive findings on the record presented by Creditor. In short, the points argued in opposition are wholly inapposite with respect to the Employment Application; that being so, the Court **OVERRULES** the Objection.

III. Conclusion

For the reasons set forth above, the Employment Application is **GRANTED** with employment effective as of October 4, 2019, with compensation pursuant to 11 U.S.C. § 328(a).

The Debtor is directed to lodge a conforming proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Based on its review of Exhibit A of the Objection, the Court notes that the Debtor and Creditor entered into the 2012 Settlement Agreement, as resolution of an action filed in the Eight Judicial District Court of Clark County, Nevada, captioned *Palco Promotions, Inc. v. C&F Sturm, LLC*, Case No. A490283.

Party Information

Debtor(s):

C & F Sturm, LLC

Represented By
Stella A Havkin

**United States Bankruptcy Court
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Thursday, November 21, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#1.00 Hearing
RE: [39] Motion to Dismiss Adversary Proceeding of U.S. Bank National
Association as Notes Trustee

Docket 39

***** VACATED *** REASON: CONTINUED 12-19-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Represented By

Jason D Strabo

Clark Whitmore

Jason M Reed

Megan Preusker

Nathan F Coco

Mark Shinderman

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

James Cornell Behrens

Alexandra Achamallah

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

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Thursday, November 21, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#2.00 Hearing re [40] Motion To Dismiss Amended Complaint

Docket 0

***** VACATED *** REASON: CONTINUED 12-19-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Represented By

Abigail V O'Brient

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

Alexandra Achamallah

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#1.00 Trial Date Set
RE: [1] Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 1

***** VACATED *** REASON: FIRST AMENDED COMPLAINT FILED
ON 1-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson	Pro Se
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Defendant(s):

Anne Lan Peterson	Pro Se
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Plaintiff(s):

Ronald Peterson	Pro Se
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Trustee(s):

Brad D Krasnoff (TR)	Represented By Eric P Israel Zev Shechtman
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**United States Bankruptcy Court
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:19-01004 Peterson v. Peterson

#2.00 Trial Date Set RE: [10] Amended Complaint Plaintiff's First Amended Complaint for (1) Declaratory Relief; (2) Breach of Fiduciary Duty; and (3) To Determine Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(3), (4), and (6), with Proof of Service by David Brian Lally on behalf of Ronald Peterson against Anne Lan Peterson. (RE: related document(s)1 Adversary case 2:19-ap-01004. Complaint by Peterson Ronald against Peterson Anne. David)

Docket 0

***** VACATED *** REASON: DISMISSED 4-17-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Defendant(s):

Anne Lan Peterson

Pro Se

Plaintiff(s):

Ronald Peterson

Represented By
David Brian Lally

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#3.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-25-19; 6-25-19; 8-26-19; 10-28-19

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 10-2-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

JW Wireless OKC, an Oklahoma

Pro Se

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CONT... JW Wireless Inc. Chapter 7

JWK Management, Inc., a California Pro Se

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01019 Timothy J. Yoo, Chapter 7 Trustee v. IDrive Interactive, LLC

#4.00 Trial Date Set

RE: [1] Adversary case 2:19-ap-01019. Complaint by Timothy J. Yoo, Chapter 7 Trustee against IDrive Interactive, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 5-15-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IDrive Interactive, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:19-01020 Timothy J. Yoo, Chapter 7 Trustee v. Texas Email Company, LLC

#5.00 Trial Date Set

RE: [1] Adversary case 2:19-ap-01020. Complaint by Timothy J. Yoo, Chapter 7 Trustee against Texas Email Company, LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), AND 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 6-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

Texas Email Company, LLC

Pro Se

Plaintiff(s):

Timothy J. Yoo, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:17-19286 Carnaval de Autos

Chapter 7

Adv#: 2:18-01455 Goodrich v. Premier Auto Credit, a California corporation et a

#6.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01455. Complaint by David M Goodrich against Premier Auto Credit, a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Nachimson, Benjamin)

Docket 1

***** VACATED *** REASON: DISMISSED 9/27/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carnaval de Autos

Represented By
Eric Bensamochan

Defendant(s):

Premier Auto Credit, a California

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

David M Goodrich

Represented By
Benjamin Nachimson

Trustee(s):

David M Goodrich (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#7.00 Trial Date Set

RE: [25] Counterclaim by Carolyn A Dye, Chapter 7 Trustee on behalf of the bankruptcy estate of Fatemah V Mahdavi against James De Arruda

Docket 25

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

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Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#8.00 Trial RE: [14] Amended Complaint For: 1) Fraud 2) Declaratory Relief 3) Rescission 4) Quiet Title by Peter W Lianides on behalf of James De Arruda against Carolyn A Dye (TR), Ali Reza Mahdavi, Fatemeh V. Mahdavi.

fr: 8-13-19; 11-12-19

Docket 0

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

DOES 1 through 10, inclusive

Pro Se

Carolyn A Dye, Chapter 7 Trustee on

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#9.00 Trial

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 3-12-19; 11-12-19

Docket 1

***** VACATED *** REASON: DISMISSED 7-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#10.00 Trial

RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 1-15-19

Docket 1

***** VACATED *** REASON: DISMISSED 7/24/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#100.00 HearingRE: [40] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2825 and 2825 1/2 Live Oak Street, Huntington Park, CA 90255 . (Rubanowitz, Shalom)

Docket 40

Tentative Ruling:

11/21/2019

For the reasons set forth herein, CONTINUE HEARING to **December 9, 2019 at 10:00 a.m.** The proof of service [Doc. No. 40] does not reflect that the Motion was served on all lienholders in a manner authorized by Fed. R. Bankr. P. 7004. To the extent any of the lienholders are insured depository institutions, Bankruptcy Rule 7004(h) generally requires that, subject to limited exceptions, an insured depository institution be served by certified mail addressed to an officer of the institution.

Moreover, Movant has failed to include any evidentiary support indicating that the senior lienholder's claim currently stands at \$454,274.71 as alleged. *See* Motion at 8.

Based on the foregoing, by no later than December 2, 2019, Movant is directed to take the following actions: (i) file a notice of continued hearing ("Notice") on the docket; (ii) serve the Notice on all interested parties pursuant to applicable federal and local rules; and (iii) file a proof of service evidencing compliance with this ruling. As part of the amended motion, Movant may submit supplemental information concerning the senior lienholder's current claim, if capable of doing so. Failure to timely comply with any of the foregoing may result in denial of the Motion, or in further delay of the requested relief.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a

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CONT... Cafa Homes Inc.

Chapter 7

telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

2:19-21088 Meiqing Sun

Chapter 7

#101.00 HearingRE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: One 2015 and one 2016 Volvo VNL- Series Tractor Trucks, VIN: 4V4NC9EH9FN919463 and 4V4NC9EH4GN949620 .

Docket 26

Tentative Ruling:

11/22/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property) [Doc. No. 26] (the "Motion")
2. Response to Motion for Relief from Stay (Personal Property) Filed by BMO Harris Bank, N.A. [Doc. No. 32] (the "Opposition")
3. BMO Harris Bank N.A.'s Reply to the Debtor's Response to Notice of Motion and Motion for Relief from Automatic Stay [Personal Property] (the "Reply") [Doc. No 33.]

I. Facts and Summary of Pleadings

Debtor Meiqing Sun (the "Debtor") filed a voluntary Chapter 7 petition on September 19, 2019 (the "Petition Date"). The Chapter 7 Trustee issued a "Report of No Distribution" on October 25, 2019 [Doc. No. 24]. BMO Harris Bank, N.A. (the "Movant") thereafter filed the instant Motion on October 30, 2019.

The Movant presently seeks relief from the automatic stay with respect to, *inter alia*, two Volvo VNL Series tractor trucks (individually, the "2015 Tractor" and the "2016 Tractor") (collectively, the "Personal Property") pursuant to 11 U.S.C. § 362(d) (1) and (d)(2). On or about March and December 2015, Movant entered into two loan agreements with Sun USA Enterprise, Inc. ("Sun USA"), the Debtor's dba, which were collateralized by the Personal Property (the "Loan and Security Agreements").

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CONT... Meiqing Sun

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Motion, Exs. 3-5. Movant claims that it holds a security interest in the Personal Property by virtue of 1) the Loan and Security Agreements, each guaranteed by the Debtor (Exs. 4, 5), and the 2) recorded certificate of title on the Personal Property, which evidences Movant's interests therein (Ex. 9). *See* Declaration of Kimberley Mundt ("Mundt Decl.") ¶ 4.

Movant asserts that cause exists to grant it relief from the automatic stay because it holds a total claim of \$306,543.99 based on a pre-petition default judgment entered in state court against the Debtor and Sun USA for damages arising from, and to recover possession of, the Personal Property. *See* Motion, Ex. 1. Movant further argues for relief because its interest is not adequately protected by an equity cushion because Movant's \$306,543.99 claim is greater than the fair market value of the Personal Property, and proof of insurance has not been provided to Movant. Movant asserts that the Personal Property has fair market value of \$117,225 (Ex. 2). In support of its valuation, Movant states:

"This is the value stated for property of this year, make, model, and general features in the reference guide most commonly used [as] source for valuation data used by Movant in the ordinary course of its business for determining the value of this type of property."

Mundt Decl., ¶ 10(a).

Aside from referencing the Black Book value estimates attached as Exhibit 2, the Movant neglects to clarify which particular figures it relied upon in reaching its aggregate valuation of \$117,225. However, upon reviewing Exhibit 2, it is clear to the Court that Movant based its valuation by adding the average wholesale values for the 2015 Tractor (\$51,400) and the 2016 Tractor (\$65,825).

Debtor's Opposition

Debtor filed a response to the Motion, mostly focusing on arguments raised in a separate motion filed for relief from stay against real property owned by Debtor [Note 1]. With respect to merits of this Motion, the Debtor contends that Movant is not entitled to the requested relief, noting that this bankruptcy proceeding "is separate and apart from her business." Opposition at 2. Debtor fails to expound on this conclusory

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CONT... Meiqing Sun

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allegation any further and concedes the Motion: "Debtor is agreeable to a modified stay order allowing Movant being allowed to repossess these two vehicles." Opposition at 4.

Movant's Reply

On reply, the Movant recaps many of the facts asserted on its moving papers and points out that Debtor has not addressed these substantive arguments. Additionally, Movant cites statutory and case law authority in support of the argument that the automatic stay did not apply to the Personal Property in the first place. *See* Reply at 3. Movant appears to assert this argument for the first time in the Reply. Accordingly, the Debtor's status as guarantor on the Loan and Security Agreements only entitles her to a potential right of redemption against the Personal Property: "[a] debtor [or] any secondary obligor...may redeem the collateral." *See* Cal. Comm. Code § 9623. Movant further argues that California and Ninth Circuit case law prescribe that debtors seeking to exercise redemption must fully satisfy all debt obligations against an asset. *In re Bialac*, 712 F.2d 426, 430 (9th Cir. 1983) ([r]edemption can be had only by satisfying "all" obligations, which clearly implicates the obligations of co-debtors); *see Clark Equipment Co. v. Mastelotto, Inc.*, 87 Cal. App. 3d 88, 94 (1978). Finally, the Movant relies on *Boucher v. Shaw* in support of the proposition that the automatic stay "does not protect non-debtor parties or their property." 572 F.3d 1087, 1092 (9th Cir. 2009).

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. Pursuant to § 362(g)(1), "the party requesting such relief has the burden of proof on the issue of the debtor's equity in property." Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Movant contends that cause exists to grant relief from stay because its interest in the Property is not protected by an adequate equity cushion. The Movant has proffered Black Book value estimates, indicating that the Personal Property is collectively valued at \$117,225 as of October 16, 2019. Motion, Ex. 2. Therefore, the

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CONT... Meiqing Sun

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Court finds that Movant carried its initial burden pursuant to § 362(g)(1).

With respect to grounds asserted under § 362(d)(2), Movant has established that the Debtor has no equity left in the Property because Movant's claim of \$306,543.99 surpasses the combined fair market value of the Personal Property, which is approximately \$117,225. The Debtor does not dispute these valuation figures and concedes to the repossession of the Personal Property. Therefore, Debtor's equity in the Personal Property is -\$189,318.99. As the Debtor has no equity in the Personal Property, and has not otherwise made any adequate protection payments, the Court determines that the Movant also prevails on § 362(d)(1) grounds as its interest is not adequately protected.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: Movant also filed a separate relief from stay motion with respect to certain real property listed in Debtor's schedules, which Debtor co-owned as joint tenant with non-filing spouse. This separate motion will be addressed in the Court's tentative ruling for Cal. No. 102.

Party Information

Debtor(s):

Meiqing Sun

Represented By
Ricky W Poon

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 25, 2019

Hearing Room 1568

10:00 AM

2:19-21088 Meiqing Sun

Chapter 7

#102.00 HearingRE: [25] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 971 Rose Street, Colton, California 92324 .

Docket 25

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 25] (the "Real Property Motion")
2. Response to Motion for Relief from Stay (Real Property) Filed by BMO Harris Bank, N.A. (the "Opposition") [Doc. No. 31]
3. BMO Harris Bank N.A.'s Reply to the Debtor's Response to Notice of Motion and Motion for Relief from Automatic Stay [Real Property] (the "Reply") [Doc. No. 34]

I. Facts and Summary of Pleadings

Debtor Meiqing Sun (the "Debtor") filed a voluntary Chapter 7 petition on September 19, 2019 (the "Petition Date"). The Chapter 7 Trustee issued a "Report of No Distribution" on October 25, 2019 [Doc. No. 24]. BMO Harris Bank, N.A. (the "Movant") filed the instant Motion on October 30, 2019. The Movant seeks relief from the automatic stay with respect to real property located at 971 Rose Street, Colton, California 92324 (the "Property"). Debtor's *Schedule C* indicates that Flagstar Bank holds a senior lien against the Property in the amount of \$169,869.42. *See* Motion, Ex. 4 at 71.

Movant appears to assert an interest in the Property by virtue of being a judgment lienholder. *See* Motion at 6. Accordingly, on September 16, 2016, Movant obtained a default judgment in state court against both the Debtor and Sun USA Enterprise, Inc., the Debtor's dba, in the amount of \$504,645.37 (the "Judgment"). Motion, Ex. 1. An abstract of judgment was recorded on September 29, 2016. *See* Motion, Ex. 2 at 29.

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CONT... Meiqing Sun

Chapter 7

On June 6, 2019, a writ of execution was granted in favor of Movant against the Property (the "Writ of Execution"). *Id.* at 63. Pursuant to the Writ of Execution, the San Bernardino County Sheriff's Office levied the Debtor's interest in the Property on June 25, 2019. *Id.* at 60-01.

Pursuant to § 362(d)(1) and (d)(2), Movant argues that cause exists to grant it relief from the automatic stay because Movant's interest is not adequately protected by an equity cushion as the sum of Movant's claim (\$306,543.99) and the senior lien (\$169,869) is higher than the fair market value of the Property, which is \$346,647 [Note 1]. *See* Motion at 8. The Property's fair market value is based on the Debtor's own estimate as provided in *Schedule A/B*. Motion, Ex. 4.

Debtor's opposition does not clearly articulate any points that substantively address the gravamen of the Motion. From what the Court gathered, the Debtor contends that the Motion should be denied because 1) Movant failed to address Debtor's exemption in the Property and 2) the Trustee issued a "No Distribution Report." Debtor does not explain why these details would preclude Movant's requested relief, and instead appears to conflate the legal considerations relevant to a § 522(f) lien avoidance motion. Opposition at 2 ("[t]he question here is simple – may Debtor claim an exemption within her real property to avoid a judicial lien? The answer is clearly yes.").

On reply, the Movant reasserts the principal arguments made in the Motion, i.e., that Movant's interest in the Property is not adequately protected and Debtor has no equity therein. Furthermore, Movant responds to Debtor's inapposite arguments, explaining why the Debtor has not claimed a valid homestead exemption in the Property under California law [Note 2]. In sum, the Movant requests that the Court lift the automatic stay "to levy upon and sell the [Property]."

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief from the stay "for cause, including the lack of adequate protection of an interest in property of such party in interest."

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CONT... **Meiqing Sun**

Chapter 7

Movant contends that cause exists to grant relief from stay because its interest in the Property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Pursuant to section 362(g)(1), Movant has the burden of proof on the issue of the Debtors' equity in the property. 11 U.S.C. § 362(g)(1).

Here, Movant establishes that the fair market value of the Property is \$346,647 as represented by Debtor in her commencement documents. *See* Motion, Ex. 10 at 38. The Court finds Debtor's own estimation made on or about September 19, 2019 to be an accurate measure of the Property's fair market value. *See* Collier on Bankruptcy ¶ 362.07 (16th 2018) (Recognizing timing of valuation for purposes of adequate protection is not settled law but concluding that determining value as of the date protection is sought will often be most consistent with the Code scheme). Movant further argues that its interest in the Property is not adequately protected because Debtor has an equity cushion of \$0 therein. *See* Motion at 8. The Court agrees with the Movant as the sum of all liens encumbering the Property, exclusive of sale costs, is approximately \$476,413.41, leaving an equity cushion of approximately -\$129,766.41. In sum, given that Debtor has no equity cushion in the Property and has evidently not made any adequate protection payments, the Movant is entitled to relief from stay pursuant to § 362(d)(1).

The Debtor contends that the Motion should be denied because Movant has not and cannot challenge her alleged homestead exemption in the Property. Debtor's opposing arguments are inapposite. As noted above, the remarks concerning the Debtor's homestead exemption are considerations more suitably asserted in a lien avoidance motion, not in opposition to relief from stay. The purpose of a relief from stay motion is to determine whether the automatic stay will be terminated, annulled, or otherwise modified as to particular estate assets, but not to determine the validity of an underlying lien. *See* §362(d); *see also* Hon. Alan M. Ahart, et al., *Cal. Pract. Guide: Bankruptcy* (The Rutter Group 2019) at Ch. 8(II)-C. Furthermore, the Court notes that Debtor has otherwise failed to challenge any of the Movant's grounds for relief.

Based on the foregoing, the Motion is granted pursuant to section 362(d)(1) as

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CONT... Meiqing Sun

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Movant's interest in the Property is not adequately protected.

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization." Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (B.A.P. 9th Cir. 1981).

As this case was brought under chapter 7, the only relevant consideration under § 362(d)(2) is whether the Debtor has any equity in the Property. For the same reasons stated above, the Motion is granted pursuant to § 362(d)(2) because the Debtor has no equity in the Property.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED pursuant to §362(d)(1) and (d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos

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Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Notwithstanding the Judgment's total amount of \$504,645.37, the Movant has only asserted a claim of \$306,543.99 against the Property.

Note 2: Among other reasons, the Movant notes that according to Debtor's commencement documents the Debtor does not reside at the Property.

Party Information

Debtor(s):

Meiqing Sun

Represented By
Ricky W Poon

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:19-21828 Marta A Turcios Guevara

Chapter 7

#103.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 18771 Flagstaff Lane, Huntington Beach, California 92646 . (Landa, Anna)

Docket 7

Tentative Ruling:

11/22/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The Debtor filed this voluntary Chapter 7 case on October 7, 2019. On May 17, 2005, Dominic Caruso and Stacey L. Caruso (the "Borrowers") executed a security instrument secured by real property located at 18771 Flagstaff Lane, Huntington Beach, California (the "Property"). *See* Motion, Ex. 1. As set forth on Exhibit 4 of the Motion, the Borrowers purportedly granted the Debtor an interest in the Property in the amount of \$5,700 through a deed a trust. The deed of trust is dated August 16, 2019, fifty-one days before this case was filed. *See* Motion, Ex. 4. Nevertheless, Debtor's commencement documents do not reflect that she possesses any interests in real property. Doc. No. 1. In fact, the record in the instant case indicates that Debtor has no contractual obligations, or is otherwise in privity of contract, with either the Borrowers or the Movant. Based on the foregoing, the Court determines that in rem relief under § 362(d)(4) is suitable. Notwithstanding, the Court cannot conclude that Debtor herself has actually engaged in any bad faith conduct, or that the instant case is part of a scheme to delay, hinder, and defraud creditors. *See In re Dorsey*, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012) ("[section] 362(d)(4) 'does not

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Chapter 7

require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all."') (internal citations omitted).

For the reasons set forth above, the Motion is GRANTED to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable law. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marta A Turcios Guevara

Pro Se

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CONT... Marta A Turcios Guevara

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Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-22299 Alvaro Molina Sandoval

Chapter 7

#104.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 HONDA HR-V, VIN: 3CZR U5H5 3JG7 00899 .

Docket 7

Tentative Ruling:

11/21/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

CONT... Alvaro Molina Sandoval

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alvaro Molina Sandoval

Represented By
Kevin Tang

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

2:19-21792 Liliana Maria Rodriguez Ayala

Chapter 7

#105.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2019 HONDA HR-V, VIN: 3CZR U5H1 XKG7 01479 .

Docket 7

Tentative Ruling:

11/21/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant. *See* Doc. No. 1.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

CONT...

Liliana Maria Rodriguez Ayala

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Liliana Maria Rodriguez Ayala

Represented By
Marshall S Tierney

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 25, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#106.00 Hearing re [1572] Issues Pertaining to Transfer of Medicare Provider Agreements.

fr, 6-5-19; 7-10-19; 7-24-19, 8-20-19, 9-4-19; 9-25-19; 10-16-19; 10-23-19;
10-30-19; 11-6-19; 11-13-19, 11-20-19

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 11-22-19**

Tentative Ruling:

11/22/2019

Hearing VACATED. This matter has been resolved pursuant to the Court's order approving a stipulation stipulation between certain of the Debtors, on the one hand, and the Secretary of the U.S. Department of Health and Human Services on behalf of the Centers for Medicare and Medicaid Services, on the other hand. See Doc. No. 3680.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#1.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01392. Complaint by Peter Mastan against Flintridge Preparatory School, Inc., Hee Young Hwang, Young J. Hwang, Joyce J. Hwang, Nam Soo Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. code §§3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19

Docket 1

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.	Pro Se
Joyce J. Hwang	Pro Se
Nam Soo Hwang	Pro Se
Young Jae Hwang	Pro Se
Hee Youn Hwang	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.
DOES 1 through 10

Pro Se

Chapter 7

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#2.00 Hearing
RE: [12] Motion to Dismiss Adversary Proceeding

FR. 11-13-19; 11-20-19

Docket 12

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 19] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc.

Pro Se

Joyce J. Hwang

Represented By
Christian T Kim

Nam Soo Hwang

Represented By
Christian T Kim

DOES 1 through 10

Pro Se

Hee Young Hwang

Represented By
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Young J. Hwang

Represented By
Christian T Kim

Young Jae Hwang

Pro Se

Hee Youn Hwang

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01393 Mastan, Chapter 7 Trustee v. Hwang et al

#3.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

FR. 11-13-19; 11-20-19

Docket 18

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

11/12/2019

No appearances required. The Chapter 7 Trustee's *Motion for One Week Continuance of Hearing on the Hwang Defendants' Motion to Dismiss to Be Heard Concurrently with Related Motions to Dismiss* [Doc. No. 30] is GRANTED. The *Motion to Dismiss* is CONTINUED to **November 20, 2019, at 10:00 a.m.**, to be heard concurrently with three related Motions to Dismiss set for hearing on that date.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

In Young Hwang

Represented By
Christian T Kim

Twig & Twine, Inc.

Represented By
Michael H Yi

Danielle Steckler

Represented By
Michael H Yi

DOES 1 through 10

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#4.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01399. Complaint by Peter J. Mastan, Chapter 7 Trustee against Hyun Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19

Docket 1

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT...

Keystone Textile, Inc.

Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#5.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

FR. 11-20-19

Docket 11

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Represented By
Christian T Kim

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#6.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

fr. 11-20-19

Docket 11

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Represented By
Christian T Kim

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01400. Complaint by Peter J. Mastan, Chapter 7 Trustee against Mirea Rea Hwang, Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19

Docket 1

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT... Keystone Textile, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01404 Mastan, Chapter 7 Trustee v. Hwang et al

#8.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

FR. 11-20-19

Docket 18

***** VACATED *** REASON: CONTINUED 12-4-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tbetty, Inc.	Represented By Christian T Kim
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Defendant(s):

Kenny Hwang	Represented By Christian T Kim
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Hyun Hwang	Represented By Christian T Kim
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Tri Blossom, LLC	Represented By Christian T Kim
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K2 America, Inc.	Represented By Michael H Yi
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Does 1-10, Inclusive	Pro Se
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Mi Rae Hwang	Represented By Christian T Kim
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Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee	Represented By Meghann A Triplett
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

CONT... Tbetty, Inc.

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing

RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19; 10-15-19; 10-23-19; 11-6-19; 11-20-19

Docket 2995

***** VACATED *** REASON: STATUS CONFERENCE WILL BE HELD
TODAY [CALENDAR NO. 10]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 26, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 STATUS CONFERENCE

RE: [2995] Motion for approval of chapter 11 disclosure statement Notice of Hearing and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief

FR. 10-2-19; 10-15-19; 10-23-19; 11-6-19; 11-20-19

Docket 2995

Tentative Ruling:

11/25/2019

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 2, 2019

Hearing Room 1568

10:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

- #1.00** HearingRE: [61] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: (including optional Memorandum of Points & Authorities (Motion for Clarification Regarding Prior Order Granting Relief from Stay, Declarations of Ronald P Slates, J Steven Bingman, and Daren M Schlechter). (Slates, Ronald)

Docket 61

Tentative Ruling:

11/27/2019

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 61] (the "Motion")
2. Order Granting Motion for Relief from Automatic Stay (Action in Non-Bankruptcy Forum) [Doc. No. 55] (the "July 16 Order")
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Neilla M. Cenci (the "Debtor"), filed this voluntary chapter 7 case on December 6, 2018 (the "Petition Date"). On June 3, 2019, Ball CM, Inc. ("Movant") filed a request for relief from the automatic stay pursuant to § 362(d)(1) to proceed with an action bearing the caption *Ball CM, Inc. v. Cenci*, Case No. 18STCV04108 (the "First State Court Action") pending in Los Angeles Superior Court (the "State Court"). On July 16, 2019, this Court entered an order granting Movant's request to proceed against Debtor with respect to the First State Court Action (the "July 16 Order") [Doc. No. 55].

Movant subsequently filed a second state court action against Debtor and various other non-debtor parties in a suit captioned as *Ball CM, Inc. v. Cenci, et al.*, Case No. 19STCV30598 (the "Second State Court Action"). The Second State Court Action

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 2, 2019

Hearing Room 1568

10:00 AM

CONT...

Neilla M Cenci

Chapter 7

expands on the First State Court Action by bringing in new claims and several non-debtor co-defendants. The Movant explains that it filed the Second State Court Action in order preserve its claims against these non-debtor parties, which would have been otherwise jeopardized had Movant amended the complaint of the First State Court Action (the "First Complaint") [Note 1]. *See* Declaration of Ronald P. Slates (the "Slates Decl."), ¶ 9. Acting under the impression that the July 16 Order covered all claims against Debtor, the Movant filed the Second State Court Action on August 28, 2019, asserting various claims against Debtor and non-debtor third parties for money paid by mistake, breach of fiduciary duty, conversion, negligence, fraud & deceit, and for declaratory relief (the "Second Complaint"). *See id.*, ¶ 8; Motion, Ex. C.

On September 27, 2019, Debtor's counsel e-mailed Movant, advising that the filing of the Second State Court Action had violated the automatic stay. *See* Motion, Ex. F. Following meet and confer efforts between counsel, Movant informed Debtor that it would be seeking further clarification from this Court. To that end, Movant presently requests that the Court 1) clarify whether the July 16 Order includes relief for all claims or disputes against the Debtor, or 2) alternatively, that the Court grant relief from stay to permit Movant to proceed with the Second State Court Action, annulling any actions retroactive to the filing of said lawsuit.

Movant asserts the following arguments in support of relief from stay:

- Mandatory abstention applies under 28 U.S.C. § 1334(c)(2);
- The claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum;
- Alternatively, it is not consistent with judicial economy for the Court to exercise jurisdiction on the non-debtor parties;
- Non-debtor parties predominate in the Second State Court Action, and this Court does not have jurisdiction over such parties under bankruptcy law;
- The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum;
- The related First State Court Action remains pending in State Court, and Movant expects that it will be consolidated with the Second State Court Action.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 2, 2019

Hearing Room 1568

10:00 AM

CONT...

Neilla M Cenci

Chapter 7

With respect to annulment, the Movant asserts the following:

- Movant filed the Second State Court Action to preserve its claims against non-debtor parties, based on the belief that the July 16 Order extended to all of Movant's claims against the Debtor;
- Debtor has suffered no prejudice or irreparable injury by the filing of the Second State Court Action;
- Movant promptly filed a stay on the Second State Court Action;
- Movant is seeking annulment of any acts deemed to violate the automatic stay on an expedient basis.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

1. Relief from Stay

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to lift the automatic stay to permit actions against a debtor in a non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the

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Neilla M Cenci

Chapter 7

- bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
 4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
 5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
 6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
 7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
 8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
 9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
 10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
 11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
 12. The impact of the stay on the parties and the "balance of hurt[.]"

In re Plumberex Specialty Prods., Inc., 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004). Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

At the outset, the Court addresses whether the July 16 Order permitted Movant to pursue the Second State Court Action against the Debtor. Based on the Slates Declaration, Movant's counsel interpreted language in the July 16 Order as broadly providing relief from stay to allow "Movant to proceed against Debtor as to all claims Movant had against Debtor." *See* Slates Decl., ¶ 8. The Court disagrees with the Movant's reading of the July 16 Order and the tentative ruling incorporated therein by reference. Upon review of the First State Court Action, the Court resolved the previous stay motion on narrow terms, which did not give Movant carte blanche to litigate all its claims against the Debtor. *See* July 16 Order, Ex. A [the "Incorporated

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Tentative Ruling"] at 2 (" [w]hat constitutes cause for granting relief from the automatic stay is decided on a *case-by-case basis*. ") (citing *In re Kronemyer*, 405 B.R. at 921) (emphasis added). The Court's ruling was based on an application of the *Plumberex* factors as to issues presented in the First Complaint. However, the Court has not had an opportunity to review claims raised for the first time in the Second Complaint. In sum, the Court clarifies that the relief granted via the July 16 Order did not allow Movant to prosecute *all* of its claims against Debtor, but rather, only the claims based on facts previously presented to the Court.

Notwithstanding the foregoing, the Court acknowledges that the vast majority of claims and allegations asserted against the Debtor in the Second State Court Action closely mirror those pled in the First State Court Action. *Compare* Motion, Ex. A, ¶¶ 12-20 *with* Motion, Ex. C, ¶¶ 36-53. Because the Court has already determined that Movant may litigate these substantive allegations in state court, Movant may pursue these claims. Furthermore, because Movant had previously expressed its intention to amend the First Complaint, the Court reasonably anticipated that allegations would be revised or enhanced with further detail. Incorporated Tentative Ruling at 4 ("granting stay relief will promote interests of judicial economy and avoid piecemeal litigation because Movant intends to seek leave to amend the Complaint to add non-debtor defendants.") Therefore, whether Movant asserted the substantive bulk of these allegations in an amended complaint or in a newly-filed lawsuit makes little practical difference.

Additionally, the Court notes that Movant has pled two original claims against the Debtor in the Second Complaint for "Money Paid by Mistake Re Ball C M 401(k) Plan" and "Conversion Re Ball C M 401(k) Plan" (collectively, the "New Claims"). The New Claims consist of detailed factual allegations not previously presented to the Court. In summary, Movant alleges that Debtor, as a result of her access to a third-party payroll service in the scope of her employment for Movant, directly or indirectly diverted funds from others' 401(k) accounts to her own 401(k) account. *See* Motion, Ex. C. [the "Second Complaint"], ¶¶ 52, 53. Having reviewed the Second Complaint, the Court determines that the New Claims are based upon the same nucleus of operative facts asserted in the First Complaint, i.e., that Debtor, by virtue of her employment position in Movant's business, misappropriated, embezzled, or diverted monies for her own benefit which it now seeks to recover. In sum, the New Claims fall within the ambit of factual allegations previously considered by the Court.

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Therefore, the Court finds that Movant has established a prima facie case that "cause" exists to grant relief from stay under § 362(d)(1) with respect to the Second State Court Action. Accordingly, the Second State Court Action involves nonbankruptcy law and is within the expertise of the state court. Allowing the Movant to continue the Second State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim, and/or the continuation of a pending adversary complaint [**Note 2**]. Moreover, as of the preparation of this tentative ruling, no substantive opposition has been filed. Therefore, pursuant to LBR 9013-1(h), the Debtor and all other interested parties are deemed to consent to the granting of the Motion.

2. Annulment Retroactive to the Filing of the Second State Court Action

Unless the Court retroactively annuls the automatic stay, the filing of the Second State Court Action is void. See *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) (holding that "violations of the automatic stay are void, not avoidable"). "[T]he proper standard for determining 'cause' to annul the automatic stay retroactively is a 'balancing of the equities' test." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003). As part of the "balancing of the equities" inquiry, courts have considered a number of factors, which relevantly include, "[a] weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive;" "[t]he Debtor's overall good faith (totality of circumstances test);" "[w]hether creditors knew of the stay but nonetheless took action, thus compounding the problem;" "[t]he costs of annulment to debtors and creditors;" "[h]ow quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;" "[w]hether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;" and "[w]hether annulment of the stay will cause irreparable injury to the debtor." See *Gasprom, Inc. v. Fateh (In re Gasprom, Inc.)*, 500 B.R. 598, 607 (B.A.P. 9th Cir. 2013) (citing *In re Fjeldsted*, 293 B.R. at 24).

Here, the Movant requested annulment of the automatic stay with respect to the Second State Court Action.

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Upon reviewing the record, the Court determines that Movant filed the Second State Court Action in good faith under the belief that it was entitled to do so, that Movant met and conferred with the Debtor to ascertain whether the automatic stay had been violated, that Movant thereafter stayed all proceedings in the Second State Court Action, and that it promptly sought the Court's clarification as to that issue. Further, there is nothing to indicate that Debtor will be prejudiced if the Court grants the requested annulment. Accordingly, the Court has previously lifted the stay to allow Movant to pursue claims in the First Complaint, and claims asserted in the First and Second Complaints arise from the same set of operative facts. Therefore, based on a totality of the circumstances, annulment of the automatic stay retroactive to the filing of the Second State Court Action is appropriate.

III. Conclusion

Based on the foregoing, the Motion is GRANTED pursuant to 11 U.S.C. § 362(d) (1) to permit the Movant to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§ 523 or 727 (to the extent applicable). The order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

Movant's request for waiver of the 14-day stay is GRANTED to allow the pending Second State Court Action to proceed. All other relief requested but not specifically granted above is denied.

Movant shall upload a conforming order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and**

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appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Movant further clarifies that it was unable to promptly amend its complaint following the July 16 Order because a hearing on the motion to amend the First Complaint was continued to October 1, 2019. As set forth in the Slates Declaration, Movant was left with no choice but to file another lawsuit to maintain claims against various non-debtor parties. *See* Slates Decl., ¶ 9.

Note 2: On March 7, 2019, the Movant filed an adversary action against Debtor, *inter alia*, seeking non-dischargeability of fraud claims under § 523(a)(2)(A), (a)(4), and (a)(6). A status conference is set for January 14, 2020.

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:19-20961 Shin Ja Kim

Chapter 7

#2.00 HearingRE: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 515 S. Hobart Blvd., Apt No. 7, Los Angeles, Ca 90020 . (Deb, Bryn)

Docket 16

Tentative Ruling:

11/27/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed a notice to quit upon all occupants of rental property located at 515 S. Hobart Blvd., Apt. 7, Los Angeles, CA 90020 on August 14, 2019, and an unlawful detainer action on August 30, 2019, with a continued trial date of December 12, 2019. The Debtor commenced this voluntary chapter 7 petition on October 21, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not

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CONT...

Shin Ja Kim

Chapter 7

change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos A. Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Shin Ja Kim

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

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2:19-22402 Rick Frank Levy and Caron Tracy Levy

Chapter 7

#3.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 BMW 2 Series 230i Convertible 2D . (Skigin, Cheryl)

Docket 11

Tentative Ruling:

11/27/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant [**Note 1**].

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Note 1: In addition, the Debtor filed a statement of non-opposition [Doc. No. 13], acknowledging that the vehicle at issue was surrendered on or about October 2019.

Party Information

Debtor(s):

Rick Frank Levy

Represented By
Michael F Chekian

Joint Debtor(s):

Caron Tracy Levy

Represented By
Michael F Chekian

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:19-22462 Altagracia Therese Vanterpool

Chapter 7

#4.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 9338 W. Olympic Blvd., Beverly Hills, California 90212 . (Bach, Julian)

Docket 13

Tentative Ruling:

11/27/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on September 4, 2019. A trial on the unlawful detainer action will be held on December 4, 2019.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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CONT... Altagracia Therese Vanterpool

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This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Altagracia Therese Vanterpool	Pro Se
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Trustee(s):

Brad D Krasnoff (TR)	Pro Se
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2:19-22816 Laisa S Paxton

Chapter 7

#5.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 4325 Club Vista Drive, Palmdale CA 93551 .

Docket 8

Tentative Ruling:

11/27/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant served a notice to quit on the Debtor on October 28, 2019. On October 30, 2019, the Debtor commenced this chapter 7 petition.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos A. Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Laisa S Paxton

Represented By
Lauren Rode

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:16-10737 FSH Delivery Services

Chapter 7

#1.00 APPLICANT: Accountant for Trustee - LEA Accountancy LLP

Hearing re [26] and [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$8,107.00 (only \$6,835.06 to be paid pursuant to the Trustee's proposed distribution)

Expenses: \$508.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

FSH Delivery Services

Represented By
Steven A Alpert

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:16-10737 FSH Delivery Services

Chapter 7

#2.00 APPLICANT: Trustee - Carolyn A Dye

Hearing re [26] and [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$2,944.99 (only \$2,482.94 to be paid pursuant to the Trustee's proposed distribution)

Expenses: \$37.60

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

FSH Delivery Services

Represented By
Steven A Alpert

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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#3.00 APPLICANT: Other - Franchise Tax Board

Hearing re [26] and [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

FSH Delivery Services

Represented By
Steven A Alpert

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:18-20408 Raymond Victor Alemania and Angela Regina Alemania

Chapter 7

#4.00 APPLICANT: Trustee - ELISSA D MILLER

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$5,750.00

Total Expenses: \$95.31

Bond Payment to International Sureties, Inc.: \$1.38

Total Fees for Tax Preparer: Fees of \$1,000.00 previously paid on an interim basis to Menchaca & Company, LLP for tax preparation services, *see* Doc. No. 30, are now confirmed as final.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Raymond Victor Alemania

Represented By

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**CONT... Raymond Victor Alemania and Angela Regina Alemania
Roland H Kedikian**

Chapter 7

Joint Debtor(s):

Angela Regina Alemania

Represented By
Roland H Kedikian

Trustee(s):

Elissa Miller (TR)

Represented By
Asa S Hami
Menchaca & Company

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2:18-20408 Raymond Victor Alemania and Angela Regina Alemania

Chapter 7

#5.00 APPLICANT: Attorney for Trustee - SulumeyerKupetz

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$10,260.50

Expenses: \$60.15

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Raymond Victor Alemania

Represented By
Roland H Kedikian

Joint Debtor(s):

Angela Regina Alemania

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

**CONT... Raymond Victor Alemania and Angela Regina Alemania
Roland H Kedikian**

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Asa S Hami
Menchaca & Company

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:18-20408 Raymond Victor Alemania and Angela Regina Alemania

Chapter 7

#6.00 APPLICANT: Accountant for Trustee - Menchaca & Company LLP

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Raymond Victor Alemania

Represented By
Roland H Kedikian

Joint Debtor(s):

Angela Regina Alemania

Represented By
Roland H Kedikian

Trustee(s):

Elissa Miller (TR)

Represented By
Asa S Hami
Menchaca & Company

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:18-20408 Raymond Victor Alemania and Angela Regina Alemania

Chapter 7

#7.00 APPLICANT: Bond Payments - International Sureties, Ltd.

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Raymond Victor Alemania

Represented By
Roland H Kedikian

Joint Debtor(s):

Angela Regina Alemania

Represented By
Roland H Kedikian

Trustee(s):

Elissa Miller (TR)

Represented By
Asa S Hami
Menchaca & Company

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:18-22631 Joseph J. Forman

Chapter 7

#8.00 APPLICANT: Trustee - Elissa D. Miller

Hearing re [56] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$6,275 [*see* Doc. No. 55] [**Note 1**]

Total Expenses: \$859.75 [*see id.*]

Note 1: In addition, Trustee made interim distributions to pay for administrative expenses totaling \$11,240.02, including a payment of \$1.42 to International Sureties, Ltd.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Joseph J. Forman

Represented By
Steven B Lever

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

CONT... Joseph J. Forman

Chapter 7

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:18-22631 Joseph J. Forman

Chapter 7

#9.00 Bond Payments - International Sureties, Ltd.

Hearing re [56] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

See Cal. No. 8, incorporated in full by reference.

Party Information

Debtor(s):

Joseph J. Forman

Represented By
Steven B Lever

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-22631 Joseph J. Forman

Chapter 7

#10.00 ccounatant for Trustee Fees (Other Firm) - Hahn Fife & Company

Hearing re [56] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/2/2019

Having reviewed the first and final application for fees and expenses filed by this Applicant, the court approves the application and awards the fees and expenses as set forth below.

Fees: \$2,016 approved [**Note 1**] [*See* Doc. No. 53]

Expenses: \$275.50 approved [*Id.*]

Note 1: Applicant requests fees in the sum of **\$2,106**; however, based upon its review of the application, the Court finds that Applicant only billed **\$2,016** for 1) preparation of its employment application (\$210); 2) preparation of state and federal income tax returns (\$1,596); and 3) preparation of this application (\$210). The Court presumes the requested fee amount is the result of a typographical error. Unless the Applicant can clarify this figure, the Court will only approve \$2,016 of its requested fees.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Joseph J. Forman

Chapter 7

Debtor(s):

Joseph J. Forman

Represented By
Steven B Lever

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:18-24769 Paul A. Carrasco

Chapter 7

Adv#: 2:19-01085 **MERCHANTS ACQUISITION GROUP LLC v. Carrasco**

#11.00 HearingRE: [51] Motion to Deem Admitted Requested Admissions and to Deem Certain Documents to be Genuine; Memorandum of Points and Authorities; Declaration of Richard W. Snyder

Docket 51

Tentative Ruling:

12/2/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion to Deem Admitted Requested Admissions and to Deem Certain Documents to Be Genuine (the "Motion") [Doc. No. 51]
 - a) Notice of Motion [Doc. No. 52]
- 2) No opposition to the Motion is on file

I. Summary of Pleadings

Merchants Acquisition Group, LLC ("Plaintiff") filed this dischargeability action against Paul A. Carrasco (the "Defendant") on March 25, 2019. The Clerk of the Court entered Defendant's default on May 2, 2019. On August 8, 2019, the Court granted Defendant's motion to set aside the default. Doc. No. 35. Defendant filed an Answer to the Complaint on August 6, 2019. Doc. No. 32. On October 3, 2019, the Court granted the motion of Defendant's counsel to withdraw. Doc. No. 44.

On September 13, 2019, Plaintiff served two sets of Requests for Admission (the "RFAs") upon both Defendant and Defendant's counsel. Defendant has not responded to the RFAs. Plaintiff moves to deem the RFAs admitted against the Defendant. No opposition to the Motion is on file.

II. Findings and Conclusions

Civil Rule 36(a)(3) provides that if a party does not respond to Requests for Admission within thirty days after being served, the matters set forth in the Request

**United States Bankruptcy Court
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

CONT... **Paul A. Carrasco**

Chapter 7

for Admission are deemed admitted against that party.

Here, Plaintiff served the RFAs on the Defendant on September 13, 2019. To avoid having the RFAs deemed admitted, the Defendant was required to either answer or object to the RFAs by no later than October 14, 2019. Defendant failed to do so. Therefore, the matters set forth in the RFAs are deemed admitted against the Defendant.

Based upon the foregoing, the Motion is GRANTED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul A. Carrasco

Represented By
Raymond H. Aver

Defendant(s):

Paul A Carrasco

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

Adv#: 2:19-01110 Nguyen dba Sam Bullion & Coin v. Zendedel

#12.00 Hearing re [26] Examination re Enforcement of Judgment of Judgment Debtor
BAHRAM ZENDEDEL aka ROBERT ZENDEDEL

Docket 0

Tentative Ruling:

12/2/2019

Appearances required.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Defendant(s):

Bahram Zendedel

Pro Se

Plaintiff(s):

Sam Thuy Nguyen dba Sam Bullion

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

- #13.00 Show Cause Hearing
RE: [38] Show Cause (1) Why This Action Should Not Be Remanded To The Los Angeles Superior Court And (2) Why The Court Should Not Sua Sponte Lift The Automatic Stay To Permit The Remanded Action To Proceed.

Docket 38

Tentative Ruling:

12/2/2019

For the reasons set forth below, this adversary proceeding is remanded to the State Court, and the automatic stay is lifted to permit the remanded action to proceed.

Pleadings Filed and Reviewed:

- 1) Order Requiring Cafa Homes, Inc. to Appear and Show Cause (1) Why this Action Should Not be Remanded to the Los Angeles Superior Court and (2) Why the Court Should Not *Sua Sponte* Lift the Automatic Stay to Permit the Remanded Action to Proceed (the "Order to Show Cause") [Adv. Doc. No. 15 and Bankr. Doc. No. 37]
 - a) Notice of Order to Show Cause [Adv. Doc. No. 17 and Bankr. Doc. No. 42]
- 2) No response to the Order to Show Cause is on file

I. Facts and Summary of Pleadings

On June 26, 2018, Faoud Barakat (the "Plaintiff") filed a *Complaint for Damages, Fraud, [and] Breach of Contract* in the Los Angeles Superior Court (the "State Court Complaint") against Cafa Homes, Inc. ("Cafa Homes") and Carlos A. Flores. On September 4, 2019, Cafa Homes filed a voluntary Chapter 7 petition. On September 5, 2019, Plaintiff removed the State Court Complaint to the Bankruptcy Court.

The material allegations of the State Court Complaint are as follows:

- 1) Flores is the principal, sole owner, and manager of Cafa Homes. Flores is the alter ego of Cafa Homes.
- 2) In January 2016, Plaintiff loaned Flores and Cafa Homes \$145,000.00 for the purpose of refurbishing real property located in Los Angeles (the

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10:00 AM

CONT...

Cafa Homes Inc.

Chapter 7

"Property"). Flores represented to Plaintiff that the loan would be secured by the Property. Flores presented to Plaintiff a forged Deed of Trust which appeared to have been recorded, when in fact the Deed of Trust had never been recorded. The recording stamps on the Deed of Trust had been forged.

- 3) Flores and Cafa Homes have defaulted on the payments due under the loan.

Based upon the foregoing allegations, the State Court Complaint asserts claims for fraud and breach of contract against Cafa Homes and Flores.

On October 28, 2019, the Court denied Plaintiff's motion for leave to file a First Amended Complaint (the "FAC"). Doc. No. 14. The proposed FAC added claims for relief under § 523(a)(2)(A) and (a)(6) against Cafa Homes. The Court found that the § 523 causes of action in the proposed FAC failed to state a claim upon which relief could be granted against Cafa Homes, because Cafa Homes is a business entity that is not eligible to receive a discharge. *See* § 727(a)(1) (providing that the "court shall grant the debtor a discharge, unless the debtor is not an individual"). The Court found that no meaningful relief could be granted on the proposed § 523 claims because Cafa Homes was ineligible to receive a discharge.

On October 28, 2019, the Court entered an *Order Requiring Cafa Homes, Inc. to Appear and Show Cause (1) Why this Action Should Not be Remanded to the Los Angeles Superior Court and (2) Why the Court Should Not Sua Sponte Lift the Automatic Stay to Permit the Remanded Action to Proceed* (the "Order to Show Cause"). Neither Plaintiff nor any other interested party has responded to the Order to Show Cause.

II. Findings and Conclusions

Title 28 U.S.C §1452 provides that the Court may remand an action "on any equitable ground." Courts consider the following factors in determining whether equitable grounds support remand:

- 1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- 2) the extent to which state law issues predominate over bankruptcy issues;
- 3) the difficult or unsettled nature of applicable law;
- 4) the presence of related proceeding commenced in state court or other

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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

CONT...

Cafa Homes Inc.

Chapter 7

nonbankruptcy proceeding;

- 5) the jurisdictional basis, if any, other than § 1334;
- 6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- 7) the substance rather than the form of an asserted core proceeding;
- 8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 9) the burden on the bankruptcy court's docket;
- 10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- 11) the existence of a right to a jury trial;
- 12) the presence in the proceeding of nondebtor parties;
- 13) comity; and
- 14) the possibility of prejudice to other parties in the action.

Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.), 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003).

Here, multiple *Enron* facts support remand. The causes of action in the State Court Complaint arise only under state law (factor two). Comity supports remand (factor thirteen). The proceeding involves Carlos A. Flores, who is not a debtor (factor twelve). There is no basis for the Court's jurisdiction over the State Court Complaint aside from 28 U.S.C. § 1334 (factor five). Remand will not interfere with the efficient administration of the estate (factor one). In the event that Plaintiff obtains a judgment against the Debtor in the State Court Action, Plaintiff can seek a distribution from the estate on account of the judgment by filing a Proof of Claim. **[Note 1]**

The Court further finds that it is appropriate to lift the automatic stay, pursuant to §362(d)(1), to permit the State Court Action to proceed to final judgment in the State Court, provided that any final judgment entered by the State Court may not be enforced absent further order of this Court.

Based upon the foregoing, this adversary proceeding is remanded to the State Court, and the automatic stay is lifted to permit the remanded action to proceed. The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel

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Tuesday, December 3, 2019

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10:00 AM

CONT... Cafa Homes Inc.

Chapter 7

Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

At this time, it is unclear whether the Chapter 7 Trustee will administer any assets in the Debtor's case.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

Adv#: 2:19-01331 Barakat v. Cafa Homes Inc. et al

#14.00 Hearing re [15] **Requiring Cafa Homes, Inc. To Appear And Show Cause (1) Why This Action Should Not Be Remanded To The Los Angeles Superior Court And (2) Why The Court Should Not *Sua Sponte* Lift The Automatic Stay To Permit The Remanded Action To Proceed.**

Docket 0

Tentative Ruling:

12/2/2019

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Defendant(s):

Cafa Homes Inc.

Pro Se

Carlos A. Flores

Pro Se

Plaintiff(s):

Faoud Barakat

Represented By
Shalem Shem-Tov

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert and Vivien Bonert

Chapter 11

#15.00 Hearing
RE: [76] Motion to Extend Time to Object to Exemptions (Blakeley, Scott)

Docket 76

***** VACATED *** REASON: PER ORDER ENTERED 11-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 3, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert and Vivien Bonert

Chapter 11

#16.00 Hearing
RE: [77] Motion for extension of time to file a complaint objecting to discharge
(Blakeley, Scott)

Docket 77

***** VACATED *** REASON: PER ORDER ENTERED 11-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
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Tuesday, December 3, 2019

Hearing Room 1568

11:00 AM

2:15-21374 Maria Del Carmen Linares

Chapter 7

#100.00 HearingRE: [54] Motion to Approve Compromise Under Rule 9019 Declaration of David M. Goodrich , Debtor Maria Del Carmen Linares (Djang, Caroline)

Docket 54

Tentative Ruling:

12/2/2019

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Motion to Approve Compromise With Safeway, Inc.; the Vons Companies, Inc., et al. Pursuant to Fed. R. Bankr. P. 9019 (the "Motion") [Doc. No. 54]
 - a) Notice of Motion [Doc. No. 51]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of a *Settlement Agreement and Release of All Claims* (the "Settlement Agreement") between the estate, on the one hand, and Safeway, Inc., the Vons Companies, Inc., Vons Stores, Vons Store # 1625, Banner Albertsons Companies, Inc., Zurich American Insurance Companies, Ace American Insurance Company, Old Republic Insurance Company, and Sedwick Claims Management Services, Inc., on the other hand.

Under the Settlement Agreement, the estate will receive a payment of \$500,000 in exchange for the settlement and release of claims arising in connection with a pre-petition personal injury action filed by the Debtor (the "Personal Injury Action"). The Personal Injury Action relates to an incident that occurred on November 4, 2013, at a Vons store located at 1260 W. Redondo Beach Blvd., Gardena, CA 90247.

The proceeds from the Settlement Agreement will be sufficient to pay in full all creditors who have filed proofs of claim. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or

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11:00 AM

CONT... Maria Del Carmen Linares

Chapter 7

settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The litigation is complex, involving issues of personal injury law that would require reports and testimony from multiple expert witnesses and medical professionals.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Paramount Interests of Creditors

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement will generate funds sufficient to pay (a) unsecured creditors who have filed allowed claims in full and (b) the expenses of administering the estate. No creditors oppose approval of the Settlement Agreement.

Difficulties To Be Encountered in the Manner of Collection

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... Maria Del Carmen Linares

Chapter 7

This factor weighs against approving the Settlement Agreement. Collection is not likely to be an issue, as the parties to the Settlement Agreement are large and solvent corporations. However, given that the other three factors weigh strongly in favor of approval, the Court accords this factor only minimal weight.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED and the Settlement Agreement is APPROVED.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Del Carmen Linares

Represented By
Caroline Djang

Trustee(s):

David M Goodrich (TR)

Represented By
Caroline Djang

**United States Bankruptcy Court
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Tuesday, December 3, 2019

Hearing Room 1568

11:00 AM

2:19-17062 Shamim Ahemmed

Chapter 7

Adv#: 2:19-01423 Cruz v. Ahemmed

#101.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding For Failure to State Cause of Action [12(b)(6)]

Docket 9

***** VACATED *** REASON: PER ORDER ENTERED 11-25-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shamim Ahemmed

Represented By
Julie J Villalobos

Defendant(s):

Shamim Ahemmed

Represented By
Lawrence R Fieselman

Plaintiff(s):

Miguel Hernandez Cruz

Represented By
Michael N Berke

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#1.00 APPLICANT: JEFFREY I GOLDEN, TRUSTEE

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2019:

As set forth below, the Trustee's proposed distribution is approved.

The only party who has objected to the Trustee's Final Report is Sonali Perera. Perera objects to the Trustee's proposal to distribute (1) \$262,552.78 to Nalan Samarwickrema ("Samarwickrema") on account of Claim No. 33 ("Claim 33") and (2) \$78,620.39 to Andrew Holdings, Inc. ("Andrew Holdings") on account of Claim No. 35 ("Claim 35"). Pursuant to the terms of a global settlement that was approved by the Court on December 1, 2014 (the "Global Settlement"), the Trustee intends to pay the amounts owed to Samarwickrema and Andrew Holdings to the "John David Fischer Attorney Client Trust Account."

On June 20, 2016, Perera reached a settlement (the "Perera Settlement") in a state court action (the "State Court Action") that he had brought against Samarwickrema and Andrew Holdings. Under the Perera Settlement, Perera is entitled to receive certain payments from Samarwickrema and Andrew Holdings from any distribution that Samarwickrema and Andrew Holdings receive on account of their claims. Perera asserts that payments to Samarwickrema and Andrew Holdings on account of their claims should be held by the Trustee, or by Perera's counsel, pending a further order resolving a dispute that has arisen concerning the portion of the claims allocable to attorneys' fees.

The Trustee opposes Perera's request. The Trustee asserts that his proposed distribution is consistent with the terms of the Global Settlement, and that there is no reason to further delay the closing of the case.

Samarwickrema and Andrew Holdings also opposes Perera's request. Samarwickrema and Andrew Holdings contend that this is the fourth time in which

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

CONT... Jayampath P Dharmasuriya

Chapter 7

Perera has attempted to use the Bankruptcy Court to collect upon amounts owed to him under the Perera Settlement. Samarwickrema and Andrew Holdings note that each of Perera's attempts to collect the Perera Settlement funds from the bankruptcy estate have been rejected by the Court. Samarwickrema and Andrew Holdings argue that Perera's latest request is akin to a motion for reconsideration, and that such motion should be rejected by the Court.

The Perera Settlement provides in relevant part:

The parties agree that from the gross proceeds of final distribution of the Dharmasuriya bankruptcy estate to the Borrowers [Samarwickrema and Andrew Holdings] upon their filed claims, that the first proceeds of said distributions shall be paid to the Borrowers' lawyers, John Fischer, Jayne Kaplan, and James Kilkowski, who will each receive their attorneys' fees, as follows:

- 1) This provision pertains only to attorneys' fees, attorneys' fees claims, or attorneys' fees incurred by Borrowers that have not yet been paid.
- 2) The aggregate amount of attorneys' fees claims that shall be paid hereby from the first distributions upon the Borrowers' filed claims shall not exceed \$430,000.
- 3) The attorneys' fees claims by John Fischer, Jayne Kaplan, and James Kilkowski (collectively, "Borrowers' Lawyers") shall be presented to the Lender [Perera], directly for approval or challenge within thirty days of the order for final distribution of borrowers' Bankruptcy Proceeds. If any portions of the claims are challenged by Lender [Perera], then the parties agree that any such challenge shall [be] made within thirty days of presentation of the claims by any of John Fischer, Jayne Kaplan or James Kilkowski, and any such challenge shall be resolved by the same court that ordered distribution of the Borrowers' share of the Bankruptcy Estate distribution.
- 4) Any attorneys' fees claims not challenged by written motion to the same bankruptcy court that ordered the distribution filed within thirty days of presentation of the claims to Lender [Perera] shall be deemed waived by the Lender, except that the aggregate of any such claims in excess of \$430,000 from distributions upon Borrowers' filed claims, is waived by Borrowers' lawyers, and the Lender need not challenge any

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such excess amounts and any such claims are otherwise deemed reduced such that the total claimed by Borrowers' lawyers from distributions from Borrowers' filed claims does not exceed \$430,000.

Doc. No. 1154 at Ex. A-10–11, ¶ 5a.

A. The Court Lacks Jurisdiction to Adjudicate Disputes Over Attorneys' Fees Under the Perera Settlement

The Court OVERRULES Perera's objection and approves the Trustee's proposed distribution. This case has been pending since 2009 and is finally ready to be closed. Nothing in Perera's objection is cause for further delaying the closing. The distribution contemplated by the Trustee does not prevent Perera from challenging the funds allocated to attorneys' fees in accordance with ¶ 5 of the Perera Settlement, excerpted above. Any such challenge must be presented to the State Court, not the Bankruptcy Court. The Perera Settlement provides that any challenge to the allocation of attorneys' fees "shall be resolved by the same court that ordered distribution of the Borrowers' share of the Bankruptcy Estate distribution." Perera Settlement at ¶ 5a. The State Court, which approved the Perera Settlement, is the "court that ordered distribution of the Borrowers' share of the Bankruptcy Estate distribution."

Further, once the Trustee distributes the funds on account of the claims of Samarwickrema and Andrew Holdings as contemplated by the Global Settlement, those funds will no longer be property of the estate, and the Court will lack jurisdiction with respect to any dispute over the funds. Moreover, the closing of the bankruptcy case—which will occur shortly after the Trustee completes his distribution—will also deprive the Court of jurisdiction.

It is true that in certain circumstances, the Court may retain ancillary jurisdiction over a closed case if necessary "to vindicate its authority and effectuate its decrees." *Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.)*, 439 F.3d 545, 549 (9th Cir. 2006). However, ancillary jurisdiction to enforce the provisions of a settlement agreement exists only if the order approving the settlement contains a provision under which the Court "explicitly retained jurisdiction." *Sea Hawk*, 439 F.3d at 549. The Perera Settlement's terms regarding disputed attorneys' fees claims do not explicitly provide that the Bankruptcy Court retains jurisdiction to adjudicate such disputes.

Even if the Perera Settlement contained a retention of jurisdiction provision, the Court's ancillary jurisdiction would not extend to adjudicating a dispute over non-

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estate funds after the closing of the case. The case of *Battle Ground Plaza v. Ray (In re Ray)*, 624 F.3d 1124 (9th Cir. 2010) is instructive. *Battle Ground Plaza* posed the question of whether the bankruptcy court retained jurisdiction over an action asserting state law breach of contract claims. At the time the jurisdictional issue arose, the bankruptcy court had already approved a Chapter 11 Plan, closed the case, overseen the payment of creditors, and discharged the debtor. While the case was still pending, the bankruptcy court had entered an order approving the sale of real property to Dean Maldonado (“Sale Order”). In 2000, prior to the filing of the bankruptcy petition, Battle Ground Plaza had entered into an agreement giving it a right of first refusal over any sale of the property. Battle Ground Plaza objected to the sale to Maldonado, asserting that the sale contravened its rights of first refusal, but the bankruptcy court overruled Battle Ground Plaza’s objections. After the Sale Order had been entered, the Plan confirmed, and the case closed, Battle Ground Plaza filed an action against the Debtor in state court, again alleging breach of contract claims on the grounds that the Sale Order violated its rights of first refusal. (Battle Ground Plaza explained the delay in exercising its rights by claiming that it had only just discovered that the property benefitted from a valuable easement giving customers of any business built on the property the right to park at a nearby mall.) The bankruptcy court concluded that it had ancillary jurisdiction over the breach of contract claims.

The Ninth Circuit found that the bankruptcy court did not have ancillary jurisdiction, notwithstanding a provision in the confirmation order stating that the bankruptcy court “shall retain jurisdiction of this case to determine any controversies in connection with assets of the bankruptcy estate.” *Id.* at 1136 n.8. The *Battle Ground Plaza* court reasoned that the bankruptcy court’s express retention of jurisdiction could not alone bring the case within its ancillary jurisdiction. *Id.* The court found that “hearing a breach of contract claim predicated on evidence that came to light after a bankruptcy case had closed, its creditors paid, and the debtor discharged, stretches the limits of the bankruptcy court’s ancillary jurisdiction too far, going beyond what is necessary for the bankruptcy court to ‘effectuate its decrees.’” *Id.* at 1136.

Under the express provisions of the Perera Settlement, the parties’ rights to assert disputes regarding the allocation of attorneys’ fees do not ripen until after the Bankruptcy Court has distributed funds to creditors. Shortly after funds are distributed to creditors the case will be closed. Similar to the situation in *Battle Ground Plaza*, Perera is seeking to invoke the Bankruptcy Court’s jurisdiction in a dispute that will arise only after the closing of the case. Ancillary jurisdiction in those circumstances goes beyond what is necessary for the Court to effectuate its decrees.

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B. The Trustee's Proposed Distribution is Approved

The Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$266,843.26

Total Expenses: \$1,818.83

Payment to the Internal Revenue Service for 2014 Taxes: \$3,582.00

Payment to the Internal Revenue Service for 2015 Taxes: \$24,609.00

United States Bankruptcy Court costs: \$586.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen

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Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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#2.00 APPLICANT: WEILAND, GOLDEN, SMILEY & WANG-EKVALL, LLP, Former Attorney for Trustee

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

The fees and expenses of this applicant were awarded on a final basis on December 17, 2014 [Doc. No. 810] and have already been paid, as follows:

Fees: \$296,130.00

Expenses: \$2,497.62

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By

William H Brownstein

Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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Jeffrey I Golden (TR)
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Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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#3.00 APPLICANT: CROWE HORWATH LLP, Former Accountant for Trustee

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2019

The fees and expenses of this applicant were awarded on a final basis on December 8, 2015 [Doc. No. 896] and have already been paid, as follows:

Fees: \$1,087.00

Expenses: \$40.95

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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#4.00 APPLICANT: WEILAND GOLDEN GOODRICH LLP, Attorney for Trustee

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

Having reviewed the sixth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (fees previously awarded on an interim basis are now confirmed as final):

Fees: \$414,925.00 (consisting of \$383,030.00 previously awarded on an interim basis and \$31,895.00 sought in connection with this application)

Expenses: \$3,933.53 (consisting of \$3,567.69 previously awarded on an interim basis and \$365.84 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

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Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

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#5.00 APPLICANT: LAW OFFICES OF ROBERT S ALTAGEN, APC, Special Counsel
for Trustee Fees

Hearing re [1145] & [1150] Trustee's Final Report and Applications for
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Tentative Ruling:

12/3/2019

The following fees and expenses previously awarded to this applicant on an interim
basis are now confirmed as final:

Fees: \$19,430.00 (awarded on December 8, 2015 [Doc. No. 895])

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to
submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at
213-894-1522. **If you intend to contest the tentative ruling and appear, please
first contact opposing counsel to inform them of your intention to do so.** Should
an opposing party file a late opposition or appear at the hearing, the court will
determine whether further hearing is required. If you wish to make a telephonic
appearance, contact Court Call at 888-882-6878, no later than one hour before the
hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By

William H Brownstein

Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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Robert S Altagen
Michael J. Weiland

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#6.00 APPLICANT: LESLIE COHEN LAW, PC, Special Counsel for Trustee Fees

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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12/3/2019

The following fees and expenses previously awarded to this applicant on an interim basis are now confirmed as final:

Fees: \$74,740.40 (consisting of \$63,021.60 awarded on March 14, 2014 [Doc. No. 714] and \$11,718.80 awarded on December 17, 2014 [Doc. No. 810])

Expenses: \$7,766.96 (consisting of \$5,963.43 awarded on March 14, 2014 [Doc. No. 714] and \$1,803.53 awarded on December 17, 2014 [Doc. No. 810])

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

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Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

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**#7.00 APPLICANT: WEILAND, GOLDEN, SMILEY, WANG, EKVALL & STROK, LLP,
Attorney for Ch 11 Trustee**

Hearing re [1145] & [1150] Trustee's Final Report and Applications for
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Tentative Ruling:

12/3/2019

The following fees and expenses previously awarded to this applicant on an interim basis are now confirmed as final:

Fees: \$815,875.00 (awarded on March 14, 2014 [Doc. No. 714])

Expenses: \$13,909.50 (awarded on March 14, 2014 [Doc. No. 714])

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By

William H Brownstein

Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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#8.00 APPLICANT: GROBSTEIN TEEPLE LLP, Accountant for Trustee Fees

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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There is a discrepancy between the Trustee's proposed distribution and this fee application. Applicant seeks fees in the amount of \$64,746.00, but the Trustee proposes to distribute to applicant fees in the amount of \$65,000.00 (\$254.00 more than the fees requested). The Court orders that the distribution is \$64,746.00, unless additional information is presented at the hearing.

The Court approves the expenses in the amount of \$45.00 sought by the Applicant.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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#9.00 APPLICANT: William H Brownstein, Attorney for Debtor

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

The fees and expenses of this applicant were awarded on a final basis on March 14, 2014 [Doc. No. 714] and have already been paid, as follows:

Fees: \$68,095.30

Expenses: \$9,952.38

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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#10.00 UNITED STATES BANKRUPTCY COURT, Clerk of the Court Costs

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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#11.00 APPLICANT: IMS, Field Representative/ Adjuster for Chapter 7 Trustee

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

The following fees and expenses previously awarded to this applicant on an interim basis are now confirmed as final:

Fees: \$1,850.00 (awarded on March 14, 2014 [Doc. No. 714])

Expenses: \$49.50 (awarded on March 14, 2014, [Doc. No. 714])

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

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**#12.00 APPLICANT: UNITED STATES TREASURY, INTERNAL REVENUE SERVICE,
Tax owed for year 2014**

Hearing re [1145] & [1150] Trustee's Final Report and Applications for
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Tentative Ruling:

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See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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**#13.00 APPLICANT: UNITED STATES TREASURY, INTERNAL REVENUE SERVICE,
Tax owed for year 2015**

Hearing re [1145] & [1150] Trustee's Final Report and Applications for
Compensation

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Tentative Ruling:

12/3/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
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#14.00 APPLICANT: IMS, Field Representative/ Adjuster for Trustee

Hearing re [1145] & [1150] Trustee's Final Report and Applications for Compensation

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Tentative Ruling:

12/3/2019

The fees and expenses of this applicant were awarded on a final basis on March 14, 2014 [Doc. No. 714] and have already been paid, as follows:

Fees: \$9,837.50

Expenses: \$77.54

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

CONT... Jayampath P Dharmasuriya

Chapter 7

Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:19-18234 Russell Gando Osio

Chapter 7

#15.00 Hearing
RE:[29] and [35] Debtor's Motion for Reconsideration

Docket 35

Tentative Ruling:

12/3/2019

For the reasons stated below, the Trustee's objection is SUSTAINED, and the Debtor's claimed homestead exemption is DISALLOWED in its entirety. Additionally, the stay on the order dated November 8, 2019 is LIFTED.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Orders: 1) Sustaining Objection to Debtor's Claimed Homestead Exemption; and 2) Compelling Turnover of Estate Property and Documents ("Motion") [Doc. No. 15]
- 2) Debtor's Emergency Motion to Set Aside Order Sustaining Trustee's Objection to Debtor's Homestead Exception [sic] And Compelling Turnover of Estate Property and Documents (the "Motion for Reconsideration" or the "Opposition") [Doc. No. 29]
 - a) Declaration of Christopher Reyes [Doc. No. 31]
 - b) Declaration of Kurt Zimmerman [Doc. No. 32]
 - c) Declaration of Leilani Lauricio Osio – Wife of Debtor [Doc. No. 33]
 - d) Declaration of Russell Gando Osio – Debtor [Doc. No. 34]
- 3) Chapter 7 Trustee's Reply to Debtor's Opposition Sustaining Trustee's Objection to Debtor's Homestead Exception [sic] And Compelling Turnover of Estate Property and Documents (the "Reply") [Doc. No. 41]
- 4) Other relevant papers:
 - a) Order Granting Trustee's Motion Objecting To Debtor's Claimed Homestead Exemption And Compelling Turnover Of Estate Property And Documents [Doc. No. 26]
 - b) Order (1) Granting Motion For Reconsideration In Part, (2) Staying Order On Trustee's Motion And (3) Setting Expedited Briefing Schedule [Doc. No. 38]

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CONT... **Russell Gando Osio**

Chapter 7

- c) Chapter 7 Voluntary Petition [Doc. No. 1]
- d) Amended Schedule C [Doc. No. 11]

I. Nature of Proceedings

The Court previously entered an order granting the Motion on November 8, 2019 (the "November 8 Order") [Doc. No. 26]. On November 14, 2019, the Court partially granted Debtor's Motion for Reconsideration, staying the November 8 Order until further notice and setting an expedited briefing schedule (the "November 14 Order") [Doc. No. 38]. The Court, having considered the record before it, including the declarations and documents received in evidence, the various memoranda and briefs filed by the parties, submits this tentative ruling, which shall constitute this Court's findings and conclusions with respect to the Motion.

II. Facts and Summary of Pleadings

Russell Gando Osio ("Debtor") commenced a voluntary Chapter 7 petition on July 16, 2019 (the "Petition Date"). Sam S. Leslie was appointed as Chapter 7 Trustee (the "Trustee"). As provided in Debtor's amended Schedule C, the Debtor claimed a homestead exemption of \$47,491.50 in real property located at 11414 Kelowna St., Sylmar, CA 91342 (the "Property") [see Doc. No. 11]. Debtor claimed the automatic homestead exemption under California Code of Civil Procedure ("CCP") § 704.730. On his *Schedule A/B: Property*, the Debtor estimates the Property's fair market value at \$668,249. On his commencement documents, the Debtor further represents that he is married, and the Property is community property.

On October 16, 2019, the Trustee filed an objection to the claimed exemption on the grounds that the Debtor does not live at the Property (the "Motion"). Based on a liquidation assessment, the Trustee estimates that there is net equity in the Property totaling \$41,523.08 [Note 1]. Accordingly, Debtor's schedules convey that he does not reside at the Property, but at a different address—9013 Woodale Ave., Pacoima, CA 91331 (the "Woodale Address"). See Official Form 101, Item No. 5 [Doc. No. 1]. According to his *Statement of Financial Affairs*, Debtor has not lived anywhere other than at the Woodale Address in the past three years. See Official Form 107, Item No. 2 [Doc. No. 1]. Reference to a rental agreement dated August 20, 2018 further demonstrates that Debtor leased the Property to a "Reynaldo Osio (Hernaiz

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CONT... Russell Gando Osio

Chapter 7

Residential Care Facility)" through August 20, 2023 (the "Rental Agreement").
Motion, Ex. 5.

Based on the facts referenced above, the Trustee seeks to fully disallow Debtor's homestead exemption in the Property. The Trustee cites to two California bankruptcy cases to argue that Debtor must have resided in the Property at the time the petition was filed to properly claim a homestead exemption under CCP § 704.730. *See generally In re Dodge*, 138 B.R. 602 (Bankr. E.D. Cal. 1992); *In re Pham*, 177 B.R. 914 (Bankr. C.D. Cal. 1994). As Debtor did not live at the Property on the Petition Date, the Debtor is ineligible to claim a § 704.730 homestead exemption. Consequently, any equity in the Property the Debtor has claimed as exempt belongs to the estate, and pursuant to 11 U.S.C. § 542(a), should be delivered to the Trustee for administration. In sum, the Trustee prays for orders compelling Debtor to turn over the Property's keys, current mortgage statement, and proof of insurance no later than seven (7) days after entry of an order granting this Motion. Motion at 7. If Debtor fails to timely comply, the Trustee requests that the Court authorize the U.S. Marshal's office to make a forced entry into the Property. *Id.*

The Debtor disputes many of the facts presented by the Trustee and opposes the Motion on two grounds. First, the Debtor seemingly repudiates the representations made in his *Statement of Financial Affairs*, and now claims that he resided at the Property from May 2018 to May 2019. *See* Declaration of Russell Gando Osio ["Debtor's Decl."], ¶ 7. Debtor supports this assertion by providing recent utility bills addressed to him at the Property's address, as well as his driver's license bearing the Property's address as his domicile. Debtor's Decl., Exs. 1-2. Furthermore, Debtor contends that the cases cited by Trustee—*In re Pham* and *In re Dodge*— are inapposite to the present facts. According to the Debtor, under CCP § 704.710(c), debtors are not required to reside at a property on the date a bankruptcy case is filed in order to avail themselves of the homestead exemption. *See* CCP § 704.710(c). Debtor, however, does not explain how or why § 704.710(c) entitles him to a homestead exemption. Second, the Debtor additionally argues that he is entitled to claim the homestead exemption through his "separated or former" spouse pursuant to CCP § 704.720(d). Even if he did not reside at the Property on the Petition Date, the Debtor alleges that both his spouse and his minor child have continuously resided at the Property since August 2018 (or May 2018). *Compare* Opposition at 11 *with* Debtor's Decl., ¶7. Debtor's supporting evidence will be further discussed in the next

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CONT... Russell Gando Osio
section.

Chapter 7

In addition, the Debtor raises the separate concern that if the Court grants this Motion, six "developmentally challenged" persons requiring "24 hour care" will be rendered homeless if the Property is lost. *See* Opposition at 12; *see also* Debtor's Decl., ¶¶ 5-6. Based on a declaration submitted by Debtor's father, part of the Property has been leased out to his business, which provides round-the-clock care to these disabled individuals. Debtor's Decl., Ex. 2.

On reply, the Trustee directly attacks Debtor's assertions as factually false because Debtor has claimed that he is single on various federal and state income tax returns. Reply, Exs. 1-5. Further, to the extent that Debtor claims to be in a common law marriage with his "spouse," the Trustee argues such claims fail as California does not recognize common law marriage. Next, the Trustee asserts that common sense defies the fact that Debtor's spouse and child reside at the Property with six developmentally disabled persons requiring ongoing care. Based on the Rental Agreement, the Trustee finds it implausible that at least eight people (in addition to in-patient care staff) reside in a 3-bed, 2-bath, single-level mobile home of 2,600 square feet. The Trustee also notes that the Rental Agreement leases out the Property in its entirety starting August 2018, without any carveouts; thus, the claim that Debtor's family has lived there since 2018 is even more perplexing. Finally, the Trustee refers to various cases to argue that Debtor bears the burden of proof to prove the validity of his homestead exemption. One of these cases is the Supreme Court's opinion in *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000), which is cited for the proposition that "the burden of proof is a substantive element of a claim and, thus, in bankruptcy it remains the same as under the applicable substantive nonbankruptcy law." *See* Reply at 5. Therefore, because the Debtor's evidentiary support has been amply controverted, the Trustee submits that Debtor has not met his burden.

III. Findings and Conclusions

At the time a Chapter 7 petition is filed, all of the debtor's legal or equitable interests in property become part of the estate, subject to the debtor's right to claim property as exempt. *In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016) (citing *Schwab v. Reilly*, 560 U.S. 770, 774 (2010)). Under § 522, states may opt out of the federal exemption scheme and determine their own exemptions. *See* § 522(b).

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CONT... **Russell Gando Osio**

Chapter 7

California is one of the states that has opted out of the federal exemption scheme. CCP § 703.130.

Under California law, the filing of a bankruptcy petition constitutes a "forced sale" which triggers the protections afforded by the automatic homestead exemption provided for in CCP §704.730. *See Weil v. Elliott (In re Elliott)*, 523 B.R. 188, 195 (B.A.P. 9th Cir. 2014) (“[t]he filing of a bankruptcy petition constitutes such a ‘forced sale’ to trigger the application of the automatic homestead exemption.”). Cal. CCP § 704.710(c) defines a homestead as “the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor’s spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.” In the bankruptcy context, the date on which the judgment creditor’s lien attached to the dwelling is the date of the filing of the petition. *See In re Dodge*, 138 B.R. 602, 606 (Bankr. E.D. Cal. 1992) (stating that in a bankruptcy proceeding, “the filing of the petition is tantamount to a levy on the debtor’s property”); *see also In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994) (“[d]ebtors must reside in the dwelling when the petition is filed in order for the Debtors to be entitled to either the automatic or declared homestead exemption”); *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) (“bankruptcy exemptions are fixed at the time of the bankruptcy petition.”).

As a matter of course, a debtor’s claimed exemption is presumed to be valid, and the party objecting to the exemption bears the burden of proof. *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 n. 3 (9th Cir. 1999); FRBP 4003(c). If the objecting party produces evidence sufficient to rebut this presumption, then the burden of persuasion shifts onto the party claiming the exemption. *Id.* at 1029 n. 3. Notwithstanding, in the context of exemptions under state law, bankruptcy courts in the Ninth Circuit follow the Supreme Court’s rationale discussed in *Raleigh*. 530 U.S. at 20-21 (finding “[u]nless some federal interest requires a different result, there is no reason why the state interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”). Accordingly, where a state exemption statute “allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.” *See In re Diaz*, 547 B.R. at 337 (holding that debtor had the burden to prove the validity of the claimed automatic homestead exemption); *see also In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015). Under California law, the

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burden of proof is imposed on the party claiming use of the homestead exemption.
See CCP §§ 703.580(b), 704. 780(a).

1) Debtor has failed to prove that he is entitled to claim an automatic homestead exemption through his purported spouse.

At the outset, the Court notes that Debtor attested to residing at the Property from May 2018 until moving out in May 2019, before the Petition Date. As consequence, where the Petition Date served as the date when the hypothetical levy was effectuated, the Debtor cannot claim the automatic homestead exemption based only on his occupancy at the Property. Therefore, the principal issue before the Court is whether Debtor may claim an automatic homestead exemption by virtue of his purported spouse's occupancy at the Property. Debtor's marital status, however, is factually disputed as further discussed below.

Pursuant to CCP § 704.720(d), a debtor not presently residing in the homestead is still entitled to the exemption while the debtor's separated or former spouse continues to live in, or exercise control over, the homestead until entry of judgment or other legally enforceable agreement dividing the community property, or until a later time as specified by court order. However, a debtor must have been legally married. Under the California Family Code, the terms "spouse," and "husband" and "wife" are synonymous with "married persons." *In re Rabin*, 336 B.R. 459, 461 (Bankr. N.D. Cal. 2005) (citing California Family Code § 11 in determining that registered domestic partners possessed the same homestead exemption rights as "spouses."); *see also* CCP § 703.110 ("[i]f the judgment debtor is married...[t]he exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment.").

The Debtor argues that he is entitled to the automatic homestead exemption because his purported spouse and son have continuously resided at the Property since at least August 2018, approximately a year before the Petition Date. The Debtor's objection was supported by his own declaration and declarations submitted by Leilani Osio; Reynoldo Osio, the Debtor's father; and various other documents affixed thereto (collectively, the "Supporting Declarations.") The Supporting Declarations are summarized as follows:

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Russell Gando Osio

Chapter 7

1. Debtor is currently married to Leilani Osio, who holds a 50% interest in the Property as community property.
2. Debtor and Leilani Osio purchased the Property in July 2017.
3. Following renovations, the Debtor resided at the Property from May 2018 to May 2019.
4. To this day, the Property is the primary residence of Leilani Osio and Debtor's minor child.
5. The Debtor and Leilani Osio are currently separated due to an "altercation" between them.
6. The Debtor currently resides out of a small private room at the Woodale Address.
7. Debtor's personal property is still maintained at the Property.

See generally, Debtor's Decl.; Declaration of Reynaldo Miski Osio; Declaration of Leilani Lauricio Osio.

Conversely, Trustee argues that Debtor is actually single as he has stated on multiple income tax returns.

In the present case, the Debtor has failed to satisfy his burden of proof because the Court cannot determine that he is married to Leilani Osio based on the present record. Although Debtor has proffered three separate declarations in support of his alleged marriage, these declarations are not credible due to Debtor's inconsistent and contradictory statements. For example, in both 2018 and 2017, the Debtor filed federal and state income tax returns as "single" and as "head of household," respectively. *See* Reply, Exs. 1-5. In 2017, when filing California income taxes, the Debtor in fact identified his marital status as "[n]ot legally married" during 2017. *See* Reply, Ex. 5 at 54. The Court is cognizant that representations made on tax documents do not definitively establish Debtor's marital status. However, the Court views these inconsistencies as seriously damaging the veracity of the assertions made

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Russell Gando Osio

Chapter 7

in the Supporting Declarations. Moreover, the Supporting Declarations fail to explain how the living arrangements of Leilani Osio and Debtor's minor son at the Property are consistent with the Rental Agreement between Debtor and his father's adult daycare business. In sum, the Court shares the Trustee's disbelief, finding it implausible that the Property houses no less than eight people (six of which are "developmentally disabled" and require 24-hour care).

Based on the record proffered, the Court cannot reasonably determine Debtor's marital status—in the past, when seemingly convenient, Debtor has represented that he is single; now Debtor claims that he is married. Additionally, for the reasons stated above, the Court has reason to doubt the Supporting Declarations. If Debtor is in fact legally married, then he has failed to submit any documentation that would unambiguously back his claim. Therefore, the Debtor has not shown that he is married to Leilani Osio and entitled to claim an automatic homestead exemption through her occupancy at the Property.

Therefore, the Trustee's objection is SUSTAINED, and Debtor's homestead exemption is DISALLOWED in its entirety.

2) The Debtor is ordered to turn over the Property and all requested documents.

Pursuant to 11 U.S.C. § 541(a)(1), the commencement of a bankruptcy petition creates an estate comprising of all of legal and equitable interests of a debtor, except as provided in subsections (b) or (c)(2) of this section. Furthermore, under §§ 521 and 542, a debtor is obligated to identify all property of the estate and to turn over the same to the Trustee, unless the property is of inconsequential value or exempt under § 522. Section 542(a) provides that an entity in possession of estate property "shall" deliver such property to the trustee. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996). This is a mandatory duty arising at the time a bankruptcy petition is filed. *Id.*

As set forth above, because the Property is valuable to the estate, the Debtor has the duty to turn it over to the Trustee pursuant to § 542(a). Accordingly, the Debtor is ordered to turn over the Property and requested documents to the Trustee no later than seven (7) days after entry of an order incorporating this tentative ruling. In addition,

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CONT... **Russell Gando Osio**

Chapter 7

the stay on the November 8 Order is lifted.

IV. Conclusion

For the reasons set forth above, the Trustee's objection is SUSTAINED, and the Debtor's claimed homestead exemption is DISALLOWED in its entirety. Additionally, the stay on the November 8 Order is LIFTED.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Trustee calculated available net equity of \$41,523.08 by subtracting estimated liquidation costs of \$53,459.92 and the senior lien amount of \$573,266 (*see* Exhibit 6) from the Property's fair market value of \$668,249 (*see* Exhibit 1). *See* Leslie Decl. at ¶ 10.

Party Information

Debtor(s):

Russell Gando Osio

Represented By
Christopher S Reyes

Trustee(s):

Sam S Leslie (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19;
11-20-19; 11-20-19

Docket 2157

***** VACATED *** REASON: CONTINUED 12-11-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By

Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1857

*** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

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10:00 AM

CONT...

Verity Health System of California, Inc.

Latonia Williams
Susan I Montgomery

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 0

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1849] Cure Objection Asserted by **Roche Diagnostics Corporation**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1849

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

David M Powlen

Kevin Collins

**United States Bankruptcy Court
Central District of California
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Wednesday, December 4, 2019

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [2144] Cure Objection Asserted by **AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 2144

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By

**United States Bankruptcy Court
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Los Angeles
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Wednesday, December 4, 2019

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CONT... Verity Health System of California, Inc.

Chapter 11

Bryan L Ngo
Susan I Montgomery

AppleCare Medical Group St.

Represented By
Susan I Montgomery

**United States Bankruptcy Court
Central District of California
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1882

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#22.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1930

*** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#23.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1949

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#24.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1965

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#25.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1954

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#26.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1850

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#27.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1940

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#28.00 Hearing re [1572] and [1866] Cure Objection Asserted by **Kaiser Foundation Hospitals**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1866

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#29.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1890

*** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

Samuel C Wisotzkey

Alere Informatics, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Brian L Davidoff

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#30.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1873

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

Kevin M Eckhardt

Shannon E Daily

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Robert A Rich

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#31.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

Docket 1863

***** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A..M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

Lisa M Peters

Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#32.00 HearingRE: [3602] Motion to Reject Lease or Executory Contract Debtors (I) Notice Of Motion And Motion To Reject Unexpired Lease Pursuant To 11 U.S.C. § 365(A) And (ii) Notice Of Abandonment Of Personal Property; Memorandum Of Points And Authorities In Support Thereof; Declaration Of Richard G. Adcock

Docket 3602

Tentative Ruling:

12/3/2019 (updated to reflect the filing of the Proof of Service of the Motion):

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' (I) Notice of Motion and Motion to Reject Unexpired Lease Pursuant to 11 U.S.C. § 365(a) *Nunc Pro Tunc* to November 30, 2019 and (II) Notice of Abandonment of Personal Property (the "Motion") [Doc. No. 3602]
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3596, 3597, 3599, 3601 and 3602 [Doc. No. 3745]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtor Verity Medical Foundation ("VMF") moves to reject an unexpired lease between itself, as lessee, and NMSBPCSLDBH LP, as lessor, dated April 7, 2003 (the "Lease"), *nunc pro tunc* to November 30, 2019. VMF further moves to abandon certain personal property located at the Lease's premises, on the ground that the property is burdensome and of inconsequential value.

No opposition to the Motion is on file.

II. Findings and Conclusions

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

CONT... **Verity Health System of California, Inc.**

Chapter 11

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract or unexpired lease:

In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." ...

Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Casterter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that VMF has shown sufficient cause to reject the Lease. The premises are no longer necessary because the Debtors no longer need the leased space to conduct business operations. Continuing to maintain the Lease creates unnecessary expense and burden for the estates.

Pursuant to § 554(a), a debtor-in-possession "may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." VMF is authorized to abandon the personal property located on the leased premises. The property is burdensome to the estate and it would not be cost-effective to auction the property.

The Court authorizes rejection of the Lease *nunc pro tunc* to November 30, 2019. The Ninth Circuit has identified four factors used to determine whether retroactive rejection is appropriate: (1) the debtor's immediate filing of a motion to reject; (2) a debtor's prompt action in setting that motion for hearing; (3) whether the debtor

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CONT... Verity Health System of California, Inc.

Chapter 11

received any benefits under the contract or lease; and (4) the non-debtor party to the lease's conduct and motivation in opposing retroactive rejection. *Pac Shores Dev., LLC v. At Home Corp. (In re At Home Corp.)*, 392 F.3d 1064, 1065 (9th Cir. 2004).

All four factors weigh in favor of retroactive rejection. With respect to the first two factors, the Debtors filed the Motion promptly, and quickly obtained a hearing date on the Motion. The Motion is being heard on December 4, 2019; the Debtors seek rejection retroactive to November 30, 2019. With respect to the third factor, the Debtors will not continue to occupy the premises subsequent to the effective date of rejection. Thus, the Debtors will not continue to receive benefits under the Lease after it has been rejected. In addition, the Debtors will be current on post-petition rent through the effective date of rejection. Regarding the fourth factor, the lessor has not opposed the Motion.

Based upon the foregoing, the Motion is GRANTED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 4, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#33.00 HearingRE: [3604] Motion /Omnibus For Approval of 1) Settlement Agreements With Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements To SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief Declaration of Richard G. Adcock In Support Thereof

Docket 3604

Tentative Ruling:

12/3/2019 (updated to reflect the filing of the Proof of Service of the Motion):

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Omnibus Motion for Approval of (1) Settlement Agreements with Labor Unions, (2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, (3) Termination of Retiree Healthcare Benefits and (4) Related Relief (the "Motion") [Doc. No. 3605]
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3604, 3608, 3610, 3611, 3612 and 3613 [Doc. No. 3742]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' Omnibus Motion for Approval of (1) Settlement Agreements with Labor Unions, (2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, (3) Termination of Retiree Healthcare Benefits and (4) Related Relief [Doc. No. 3668]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

Certain of the Debtors are parties to collective bargaining agreements (the "CBAs") with the California Nurses Association (the "CNA"), the National Union of

**United States Bankruptcy Court
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CONT... **Verity Health System of California, Inc.**

Chapter 11

Healthcare Workers (the "NUHW"), the Service Employees International Union, United Healthcare Workers-West (the "SEIU"), the United Nurses Associations of California/Union of Health Care Professionals ("UNAC"), and IFPTE AFL-CIO CLC, Local 20 ("Local 20," and together with CNA, NUHW, SEIU, and UNAC, the "Unions"). The Debtors have reached settlement agreements with the Unions providing for the modification of the CBAs (the "Settlement Agreements").

The Debtors seek an order (1) approving the Settlement Agreements, (2) authorizing the assumption of the modified CBAs to Strategic Global Management, Inc. ("SGM"), and (3) authorizing the Debtors to terminate retiree healthcare benefits used by eleven individuals. No opposition to the Motion is on file.

The Official Committee of Unsecured Creditors (the "Committee") does not oppose the Motion. However, the Committee asserts that the Debtors' characterization of the terms of the Settlement Agreements in the Motion is too general. The Committee does not oppose the entry of an order granting the Motion, provided (1) the language of the Motion at paragraph 43, summarizing the Settlement Agreements, be superseded by the Settlement Agreements themselves and (2) none of the Settlement Agreements be deemed to require the Unions to vote in favor of any particular plan.

The material terms of the Settlement Agreements are as follows:

- 1) Each Union-represented employee who is not offered a job with SGM's applicable acquiring and operating entity will be provided the following:
 - a) An allowed claim for paid time off ("PTO"); and
 - b) An allowed claim for severance.
- 2) The CBAs shall be deemed modified to immediately terminate and discontinue the benefits of eleven current retirees (the "Retiree Benefits"). The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Health Benefit (the "Lump Sum Payment").
- 3) The Settlement Agreements are conditioned upon the closing of the SGM Sale, with a purchase price that is not materially less than that set forth in the Asset Purchase Agreement (the "APA").
- 4) The Unions agree not to oppose the prompt closing of the SGM Sale.

II. Findings and Conclusions

A. The Modified CBAs Are Approved

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CONT... Verity Health System of California, Inc.

Chapter 11

Section 1113 provides:

- (a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, ... may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

- (b)
 - (1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—
 - (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
 - (B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.
 - (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

- (c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—
 - (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

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Verity Health System of California, Inc.

Chapter 11

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

"Bankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test" first set forth in *In re Am. Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984). *See In re Karykeion, Inc.*, 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010); *see also In re Family Snacks, Inc.*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001) ("Virtually every court that is faced with the issue of whether a Chapter 11 debtor may reject its collective bargaining agreement utilizes a nine-part test that was first set down by the bankruptcy court in *In re American Provision Co.*"). The *American Provision* factors are as follows:

- 1) The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
- 2) The proposal must be based on the most complete and reliable information available at the time of the proposal.
- 3) The proposed modifications must be necessary to permit the reorganization of the debtor.
- 4) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
- 5) The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
- 6) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the Union.
- 7) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
- 8) The Union must have refused to accept the proposal without good cause.
- 9) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

American Provision, 44 B.R. at 909.

Courts apply the *American Provision* factors even where a debtor is liquidating its assets and does not intend to continue in business after emerging from bankruptcy.

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CONT... **Verity Health System of California, Inc.**

Chapter 11

Courts reason that "reorganization," as used in § 1113(b)(1)(A), is "generally understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code's priority scheme." *Family Snacks*, 257 B.R. at 895. Some courts have held that where, as here, the Debtors are liquidating their assets, the phrase "necessary to permit the reorganization of the debtor" means "necessary to achieve a sale under § 363 of the Bankruptcy Code." *Alpha Nat. Res., Inc.*, 552 B.R. 314, 333 (Bankr. E.D. Va. 2016); *see also Walter Energy*, 542 B.R. at 890 (requiring that the debtor's proposal "be necessary to permit ... those modifications necessary to consummate a going-concern sale"); *In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) (finding that the debtor had proven that rejection was necessary when the closing of a § 363 sale was contingent on rejection of a collective bargaining agreement). Others courts have concluded that in a liquidating case, the phrase "necessary to permit reorganization of the debtor" means "necessary to accommodate confirmation of a Chapter 11 plan." *Family Snacks*, 257 B.R. at 895.

In the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan." This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case. From the outset, the Debtors have stated their intent to sell the six Hospitals that they operate as going concerns, and use the proceeds from the sales to fund a plan of liquidation. The Debtors have already sold two of their Hospitals, and are in the process of closing the sale of their four remaining Hospitals.

Sections 1113 and 1114 are interpreted interchangeably because the language and standards of these sections overlap. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1129 n.8 (11th Cir. 2018). To the extent that the Settlement Agreements require approval under § 1114, the Court's finding that the Settlement Agreements satisfy § 1113 shall also be deemed to constitute a finding that the Settlement Agreements satisfy § 1114.

The Unions have agreed in the Settlement Agreements that the Debtors have met *American Provision* factors one, five, six, and seven. Factor eight is moot because the Unions have not rejected the Debtors' proposed amendments to the CBAs.

As set forth below, the Court finds that the Debtors have satisfied factors two (proposal made on good information), three (proposal necessary for cases), four (parties treated fairly), and nine (balance of equities favors relief).

Factor 2—The Proposal Was Based on the Most Complete and Reliable

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CONT... Verity Health System of California, Inc.

Chapter 11

Information

To satisfy this factor, “the debtor is simply required to gather the most complete information available at the time and to base its proposal on information it considers reliable.” *In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010).

The Court finds that the Debtors’ proposals to the Unions were based on current, complete, and reliable information. Throughout the negotiation process the Debtors continued to update the proposals so that they reflected the latest developments in the cases.

Factor 3—The Proposal Is Necessary to Permit Plan Confirmation

As noted, within the context of this case, the term “necessary to permit the reorganization of the debtor” is best interpreted to mean “necessary to permit the Debtors to confirm a liquidating plan.” This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case.

The Court finds that the proposal is necessary to facilitate the sale of the Hospitals on a going-concern basis. The Debtors, the Unions, and SGM have renegotiated the CBAs in a manner that will allow the Hospitals to continue to operate sustainably. As the Court has found previously, the unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs is simply too great to permit the Hospitals to continue to sustainably operate. The modified CBAs will enable continued operation of the Hospitals.

Factor 4—The Proposed Modifications Treat Creditors, the Debtor, and All Affected Parties Fairly and Equitably

The Court finds that the Settlement Agreements treat all parties fairly and equitably. The Settlement Agreements do not disproportionately burden the employees represented by the Unions (the “Represented Employees”). The Settlement Agreements place burdens upon all constituencies in these cases; they do not single out the Represented Employees for unfair treatment.

The Court finds that the Lump Sum Payment to Retirees is fair and equitable. The Retirees will receive cash equal to the present value of their health benefits. The Retirees are not prejudiced by this treatment.

Most important, the Settlement Agreements will allow the Hospitals to continue to operate and continue to employ the majority of the Represented Employees. Obviously, continued operation of the Hospitals is in the best interests of all constituents in these cases—the Debtors, the Represented Employees, SGM, and

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CONT... Verity Health System of California, Inc.
creditors.

Chapter 11

Factor 9—The Balance of the Equities Favors Relief

The balance of the equities favors the modifications negotiated between the Debtors and the Unions. As discussed, the Settlement Agreements provide a path forward for the continued operation of the Hospitals under the management of SGM, which will preserve the jobs of most of the Represented Employees.

B. The Debtors are Authorized to Assume and Assigned the Modified CBAs to SGM

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

The Unions have agreed that the consideration provided through execution of the Settlement Agreements constitutes adequate assurance of future performance under the CBAs within the meaning of § 365(b)(1).

Assumption and assignment of the CBAs is an appropriate exercise of the Debtors' sound business and judgment. Assumption and assignment allows SGM to continue to employ the Represented Employees, whose work is essential to the functioning of the Hospitals.

The Debtors have satisfied the requirements for assumption and assignment of the CBAs under § 365.

C. Concerns Raised by the Committee

In response to the concerns raised by the Committee, the Court confirms that with respect to the Unions' obligations to support any plan propounded by the Debtors, the language of the Settlement Agreements (as opposed to the language summarizing the Settlement Agreements contained in the Motion) controls.

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CONT... Verity Health System of California, Inc.

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III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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2:19-13797 **Liboria Zavalza**

Chapter 11

#34.00 HearingRE: [82] Application for Compensation for Lionel E Giron, Debtor's Attorney, Period: 4/3/2019 to 11/12/2019, Fee: \$15,785.00, Expenses: \$530.80.

Docket 82

Tentative Ruling:

12/3/2019

Having reviewed the first interim application for fees and expenses filed by this applicant, the Court approves the application and awards the fees and expenses set forth below.

Fees: \$15,785 [Doc. No. 82] [**Note 1**]

Expenses: \$530.80 [*see id.*]

Note 1: As set forth in Debtor's declaration, the applicant agreed to waive \$1,315.80 of overall fees and expenses (totaling \$16,315.80), leaving a balance of \$15,000. Zavalza Decl., ¶ 7 [Doc. No. 89].

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liboria Zavalza

Represented By
Lionel E Giron
Crystle Jane Lindsey

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CONT...

Liboria Zavalza

Joanne P Sanchez

Chapter 11

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2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#35.00 Hearing
RE: [12] Motion to Dismiss Adversary Proceeding

FR. 11-13-19; 11-20-19; 11-26-19

Docket 12

Tentative Ruling:

12/3/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED, but the Trustee is given leave to amend.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers [Doc. No. 1] (the "Complaint")
- 2) Defendants' Hee Young Hwang, Young J. Hwang, Joyce J. Hwang and Nam Soo Hwang's Notice of Motion and Motion to Dismiss Complaint [Doc. No. 12] (the "Motion")
- 3) Plaintiff's Opposition to Defendants' Hee Young Hwang, Young J. Hwang, Joyce J. Hwang and Nam Soo Hwang's Notice of Motion and Motion to Dismiss Complaint [Doc. No. 16] (the "Opposition")
- 4) Defendants' Hee Young Hwang, Young J. Hwang, Joyce J. Hwang and Nam Soo Hwang's Reply to Opposition to Motion to Dismiss Complaint [Doc. No. 18] (the "Reply")

I. Facts and Summary of Pleadings

Keystone Textile, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 14, 2017 (the "Petition Date"). On September 13, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers* [Doc. No. 1] (the "Complaint") against Flintridge Preparatory

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CONT... **Keystone Textile, Inc.**

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School, Inc. ("Flintridge"), Young Jae Hwang, Hee Youn Hwang, Joyce J. Hwang, and Nam Soo Hwang. On November 15, 2019, the Court approved a stipulation providing for the voluntary dismissal of Joyce J. Hwang. Doc. No. 24.

A. Summary of the Complaint's Allegations

The material allegations of the Complaint are as follows:

Until March 2017, the Debtor was engaged in the business of manufacturing and selling wholesale fabrics and accessories. Complaint at ¶ 14. From September 2008 through the conclusion of 2015, Jason Young Cho aka Youngduk Duk Cho aka Jason Duk Cho ("J. Cho") was the Chief Executive Officer and sole shareholder of the Debtor. *Id.* at ¶ 15. J. Cho is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 16.

J. Cho and Kenny Hwang aka Kyoung Sub Hwang ("K. Hwang") had a verbal agreement to share ownership and control of the Debtor, with J. Cho holding a 30% ownership interest and K. Hwang holding a 70% ownership interest. *Id.* at ¶ 17. In furtherance of a scheme to avoid paying more than \$1 million in taxes, K. Hwang did not disclose his ownership interest in the Debtor until 2016. *Id.* At the end of 2015 or the beginning of 2016, J. Cho transferred his interest in the Debtor to K. Hwang for no consideration. *Id.* at ¶ 18. K. Hwang is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 20.

At all relevant times, J. Cho and K. Hwang jointly managed the Debtor and had access to and control over the Debtor and the Debtor's bank accounts. *Id.* at ¶ 21.

Between 2013 and the Petition Date, J. Cho and K. Hwang misdirected funds of the Debtor to pay for the personal expenses of themselves and their relatives. *Id.* at ¶ 22. The misdirection of funds occurred while the Debtor was insolvent, undercapitalized, and unable to pay its debts as they became due in the ordinary course of business. *Id.*

Between 2013 and the Petition Date, K. Hwang caused the Debtor to transfer substantial amounts of money to his wife, children, and other relatives in the guise of "loans" that were never repaid. *Id.* at ¶ 23.

Between 2013 and the Petition Date, K. Hwang and/or J. Cho caused the Debtor to transfer funds to Flintridge, a private secondary school (the "Transfers"). *Id.* at ¶ 26. The purpose of the Transfers was to fund the tuition expenses of Young Jae Hwang, Hee Youn Hwang, and Nam Soo Hwang (collectively, the "Hwang Defendants"). *Id.* In some instances, the funds were transferred directly from the Debtor to Flintridge.

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Id. In other instances, the funds were received by Flintridge through Facts Management Company, Inc. ("Facts Management"), which acted as a conduit for certain payments transferred from the Debtor to Flintridge for the benefit of the Hwang Defendants. *Id.* In other cases, the funds were transferred directly to the Hwang Defendants. *Id.* at ¶ 35 and Ex. A.

2. Claims for Relief

Based upon the foregoing allegations, the Complaint asserts claims (1) to avoid the Transfers as intentionally fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(a) and 3439.07) and § 548(a)(1)(A), (2) to avoid the Transfers as constructively fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(b), 3439.05, and 3439.07) and § 548(a)(1)(B), and (3) to recover the avoided Transfers, pursuant to § 550(a)(2).

The Trustee also asserts a "right to amend this Complaint to allege additional claims against the Defendants and to challenge and recover transfers made to or for the benefit of the Defendants in addition to those transfers alleged in this Complaint." Complaint at ¶ 13.

B. Summary of Defendant's Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant makes the following arguments in support of the Motion:

The Complaint does not allege specific facts showing that the Hwang Defendants directly received the Transfers at issue. The only plausible theory of liability against the Hwang Defendants is that they were persons "for whose benefit" the Transfers were made. The Trustee's theory is that the Debtor's Transfers to Flintridge enabled the Hwang Defendants to receive the benefit of an education at Flintridge.

The fact that the Hwang Defendants received an education does not qualify them as the "entity for whose benefit" the Transfers were made under § 550(a). "[T]ransfer beneficiary status depends on three aspects of the 'benefit': (1) it must actually have been received by the beneficiary; (2) it must be quantifiable; and (3) it must be accessible to the beneficiary." *In re Brooke Corp.*, 488 B.R. 459, 468 (Bankr. D. Kan. 2013). The benefit of an education is not sufficiently quantifiable and ascertainable to meet the definition of a "benefit."

In *Lo v. Lee*, 24 Cal. App. 5th 1065, 1072-74, 234 Cal. Rptr. 3d 824, 827-29 (Ct.

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App. 2018), the court found that payments made by a debtor father for his son's tuition could be avoidable, but the son could not be held liable as a beneficiary of those payments. In construing the Uniform Voidable Transfers Act (the "UVTA"), the *Lo* court applied bankruptcy cases interpreting § 550(a). The court found that the son was not an "entity for whose benefit" the transfers were made, because the benefit was not quantifiable and was not accessible to the son:

As to the second prong, courts have stated that in order for a benefit to be "quantifiable," "[a] merely theoretical benefit is not sufficient, since it would not be subject to disgorgement." (*McCook Metals, supra*, 319 B.R. at p. 591.) Clearly, there is no way to quantify the intellectual and other benefits You [the son] received from the educational opportunity afforded him by Lee's transfer. Even plaintiff concedes "a creditor cannot levy on the student's college education." Any such benefits are entirely intangible and theoretical, and could never be disgorged by him as they cannot be valued solely in terms of dollars and cents.

Additionally, the benefit You received is not, and never was, "accessible" to him. Lee's funds were transmitted directly to Northeastern, and there are no allegations suggesting that the funds were ever controlled by You. In addressing this prong, the *McCook Metals* court noted that "[e]ven if a quantifiable benefit is actually received, it could not fairly be disgorged if the beneficiary never had access to it." (*McCook Metals, supra*, 319 B.R. at p. 592.) Here, You had no control over the funds that Lee transferred to the school, and the FAC does not allege that he had access to these funds at any point in time.

Lo v. Lee, 24 Cal. App. 5th 1065, 1074–75, 234 Cal. Rptr. 3d 824, 829–30 (Ct. App. 2018).

In addition, the Trustee has improperly reserved the right to assert claims regarding additional, undiscovered transfers. The Complaint was filed two days prior to the expiration of the statute of limitations. By seeking to preserve the possibility of filing an amended complaint alleging additional transfers, the Trustee is attempting to circumvent the statute of limitations. The Court should prohibit any future amendments that seek to add claims relating to additional transfers.

C. Summary of the Trustee's Opposition

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The Trustee makes the following arguments in his Opposition to the Motion:

Under section 550(a)(1), the Trustee can recover an avoided transfer from the "initial transferee," or an "entity for whose benefit [a] transfer was made." *Danning v. Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 547 (9th Cir. 1991). The phrase "entity for whose benefit [a] transfer was made," refers to those who receive a benefit as a result of the initial transfer from the debtor—not as the result of a subsequent transfer." *In re Bullion Reserve of North America*, 922 F.2d 544, 547 (9th Cir. 1991). Moreover, as the Ninth Circuit recognized in *Bullion Reserve*, such parties are liable, whether or not they actually benefit from the transfers in question. *Id.* The language of section 550(a)(1) "implies a requirement that, in transferring the avoided funds, the debtor must have been motivated by an intent to benefit the individual or entity from whom the trustee seeks to recover." *Halperin v. Moreno (In re Green Field Energy Servs.)*, 2015 Bankr. LEXIS 2914, *50-51. Additionally, "an entity need not actually benefit, so long as the transfer was made for his benefit." *Burdette v. Emerald Partners, LLC (In re Cascade Ag Servs.)*, 2017 Bankr. LEXIS 3804, *21-22 (internal citations omitted). The Trustee's power to recover from the entity "for whose benefit such transfer was made" is absolute. *See Matter of Walldesign, Inc.*, 872 F.3d 954, 962 (9th Cir. 2017) (When a trustee has proven the avoidability of a transfer, the Ninth Circuit has interpreted § 550(a) to provide trustees "an absolute right of recovery against the 'initial transferee' and any 'entity for whose benefit such transfer was made.'" (quoting *Danning v. Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 547 (9th Cir. 1991)).

The Complaint sufficiently alleges that the Hwang Defendants were the intended beneficiaries of the Transfers, because the Transfers were made to pay for the Hwang Defendants' private secondary education.

Defendants' request that the Court bar a future amended complaint alleging additional transfers is not proper. In making such a request, the Defendant is asking the Court to adjudicate a matter that is not before it.

D. Summary of the Defendants' Reply

The Defendants make the following arguments in their Reply to the Trustee's Opposition:

The Trustee provides no clear authority to rebut the *Lo v. Lee* case, which is directly on point. Most of the transfers occurred outside the two-year reachback period

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of § 548. Therefore, the Trustee is seeking to avoid the transfers under § 544(b), applying state law. That means that the Trustee's failure to rebut *Lo v. Lee*, which applied California law, is fatal to his position.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Under California law, recipients of an education are not liable, under a fraudulent transfer theory, for tuition payments made directly from a debtor to the school. As held by the court in *Lo v. Lee*, the educational benefits received are "entirely intangible and theoretical, and could never be disgorged" *Lo*, 24 Cal. App. 5th at 1074–75. As further provided in *Lo*, disgorgement is unwarranted because the beneficiaries of the education never had access to or control over the funds transferred

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to the school. *Id.*

The Complaint alleges that the Debtor transferred tuition payments for the benefit of Defendant Joyce Hwang ("J. Hwang") either directly to Flintridge, or to Flintridge by way of a conduit, Facts Management. Under *Lo v. Lee*, J. Hwang would not be subject to fraudulent transfer liability on account of these transfers. However, these allegations have been mooted by the stipulated dismissal of J. Hwang.

The Complaint's allegations with respect to Young Jae Hwang, Hee Youn Hwang, and Nam Soo Hwang lack the necessary specificity. The Complaint contains a ledger setting forth the Transfers. The ledger indicates that Check No. 20126, in the amount of \$8,630.52, was made payable to Nam S. Hwang. However, the memorandum accompanying the ledger entry states "Tuition / Hee Yeon Hwang." With respect to this entry, it is unclear whether the Trustee is seeking to avoid the Transfer as to Hee Yeon Hwang (as an entity for whose benefit the Transfer was made), or seeking to avoid the Transfer as to Nam S. Hwang (the payee named on the check). Certain other entries on the ledger suffer from the same ambiguity.

As a result of this lack of clarity, the Complaint does not provide the Defendants sufficient notice of the misconduct alleged. The Motion to Dismiss is GRANTED, but the Trustee is given leave to amend.

Defendants assert that the Trustee's reservation of the right to amend the Complaint to allege additional transfers do not put Defendants on sufficient notice of the misconduct alleged. Defendants seeks to bar the Trustee from filing an amended complaint that alleges additional transfers.

The Court declines to impose restrictions upon, or rule upon the propriety of, a hypothetical complaint that has not been filed. The Court's role "is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies" *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). If the Trustee files an amended complaint alleging additional transfers, the Defendants are free to assert that the amended complaint's new allegations are time-barred because they do not relate back to the Complaint under Civil Rule 15(c). Unless that situation arises, the Court will not determine whether allegations of additional transfers are appropriate.

Based upon the foregoing, the Motion to Dismiss is GRANTED, but the Trustee is given leave to amend. Upon the filing of a First Amended Complaint, the Clerk of the Court will issue an updated Scheduling Order setting new litigation deadlines, including the date of a continued Status Conference.

Within seven days of the hearing, the Trustee shall submit an order incorporating

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this tentative ruling by reference.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keystone Textile, Inc.	Represented By Christian T Kim
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Defendant(s):

Flintridge Preparatory School, Inc.	Pro Se
Joyce J. Hwang	Represented By Christian T Kim
Nam Soo Hwang	Represented By Christian T Kim
DOES 1 through 10	Pro Se
Hee Young Hwang	Represented By Christian T Kim
Young J. Hwang	Represented By Christian T Kim
Young Jae Hwang	Pro Se
Hee Youn Hwang	Pro Se

Plaintiff(s):

Peter Mastan	Represented By
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Chapter 7

Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01392 Mastan v. Flintridge Preparatory School, Inc. et al

#36.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01392. Complaint by Peter Mastan against Flintridge Preparatory School, Inc., Hee Young Hwang, Young J. Hwang, Joyce J. Hwang, Nam Soo Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b) 548(a)(1)(A) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. code §§3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19; 11-26-19

Docket 1

Tentative Ruling:

12/3/2019

See Cal. No. 35, above, incorporated in full by reference.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Flintridge Preparatory School, Inc. Pro Se

Joyce J. Hwang Pro Se

Nam Soo Hwang Pro Se

Young Jae Hwang Pro Se

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Hee Youn Hwang

Pro Se

DOES 1 through 10

Pro Se

Plaintiff(s):

Peter Mastan

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21270 Keystone Textile, Inc.

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Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#37.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

FR. 11-20-19

Docket 11

Tentative Ruling:

12/3/2019

For the reasons set forth below, the Motion to Dismiss is DENIED.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers (the "Complaint") [Doc. No. 1]
- 2) Defendant Hyun Hwang's Notice of Motion and Motion to Dismiss Complaint (the "Motion") [Doc. No. 11]
- 3) Plaintiff's Opposition to Defendant Hyun Hwang's Motion to Dismiss Complaint (the "Opposition") [Doc. No. 14]
- 4) Defendant Hyun Hwang's Reply to Plaintiff's Opposition to Motion to Dismiss Complaint (the "Reply") [Doc. No. 15]

I. Facts and Summary of Pleadings

Keystone Textile, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 14, 2017 (the "Petition Date"). On September 14, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers* [Doc. No. 1] (the "Complaint") against Hyun Hwang (the "Defendant").

A. Summary of the Complaint

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I. Allegations

The material allegations of the Complaint are as follows:

Until March 2017, the Debtor was engaged in the business of manufacturing and selling wholesale fabrics and accessories. Complaint at ¶ 8. From September 2008 through the conclusion of 2015, Jason Young Cho aka Youngduk Duk Cho aka Jason Duk Cho ("J. Cho") was the Chief Executive Officer and sole shareholder of the Debtor. *Id.* at ¶ 9. J. Cho is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 10.

J. Cho and Kenny Hwang aka Kyoung Sub Hwang ("K. Hwang") had a verbal agreement to share ownership and control of the Debtor, with J. Cho holding a 30% ownership interest and K. Hwang holding a 70% ownership interest. *Id.* at ¶ 11. In furtherance of a scheme to avoid paying more than \$1 million in taxes, K. Hwang did not disclose his ownership interest in the Debtor until 2016. *Id.* At the end of 2015 or the beginning of 2016, J. Cho transferred his interest in the Debtor to K. Hwang for no consideration. *Id.* at ¶ 12. K. Hwang is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 13.

At all relevant times, J. Cho and K. Hwang jointly managed the Debtor and had access to and control over the Debtor and the Debtor's bank accounts. *Id.* at ¶ 15.

Between 2013 and the Petition Date, J. Cho and K. Hwang misdirected funds of the Debtor to pay for the personal expenses of themselves and their relatives. The misdirection of funds occurred while the Debtor was insolvent, undercapitalized, and unable to pay its debts as they became due in the ordinary course of business. *Id.* at ¶ 16.

Between 2013 and the Petition Date, K. Hwang caused the Debtor to transfer substantial amounts of money to his wife, children, and other relatives in the guise of "loans" that were never repaid. *Id.* at ¶ 17.

By way of a check dated July 31, 2014, K. Hwang and J. Cho caused the Debtor to transfer \$50,000 to the Defendant (the "Transfer"). *Id.* at ¶ 20 and Ex. A. The Defendant is K. Hwang's daughter and is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 21.

Although the Transfer to Defendant was listed in the Debtor's QuickBooks with the memo reference "LOAN PMT," the Debtor's financial records contain no evidence of any corresponding loan. *Id.* at ¶ 23. The Transfer exceeded the total amount of value, if any, that the Defendant provided to the Debtor, and the Debtor did not receive reasonably equivalent value in exchange for the Transfers. *Id.* at ¶ 26.

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2. Claims for Relief

Based upon the foregoing allegations, the Complaint asserts claims (1) to avoid the Transfer as intentionally fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(a) and 3439.07) and § 548(a)(1)(A), (2) to avoid the Transfer as constructively fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(b), 3439.05, and 3439.07) and § 548(a)(1)(B), and (3) to recover the avoided Transfer, pursuant to § 550(a)(2).

The Trustee also asserts a "right to amend this Complaint to allege additional claims against the Defendant Hyun and to challenge and recover transfers made to or for the benefit of the Defendant Hyun in addition to those transfers alleged in this Complaint." Complaint at ¶ 7.

B. Summary of Defendant's Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant makes the following arguments in support of the Motion:

The Complaint fails to plead the alleged fraud with the necessary specificity, as required by Civil Rule 9(b). The Complaint does not allege "the who, what, when, where, and how" of the alleged fraud.

The Trustee has improperly reserved the right to assert claims regarding additional, undiscovered transfers. The Complaint was filed two days prior to the expiration of the statute of limitations. By seeking to preserve the possibility of filing an amended complaint alleging additional transfers, the Trustee is attempting to circumvent the statute of limitations. The Court should prohibit any future amendments that seek to add claims relating to additional transfers.

C. Summary of the Trustee's Opposition

The Trustee makes the following arguments in his Opposition to the Motion:

The allegations of the Complaint are sufficient to state a claim. The Trustee has alleged that the Debtor transferred \$50,000 to the Defendant; that the Defendant is not a creditor of the Debtor, but is instead the daughter of K. Hwang, an insider of the Debtor; that the Debtor's financial records contain no indication that the \$50,000 transfer was a loan; that the \$50,000 transfer exceeded the value, if any, that

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Defendant provided to the Debtor; and that the Debtor did not receive reasonably equivalent value for the transfer. The Complaint's allegations of fraud are detailed and specific.

Defendant's request that the Court bar a future amended complaint alleging additional transfers is not proper. In making such a request, the Defendant is asking the Court to adjudicate a matter that is not before it.

D. Summary of the Defendant's Reply

The Defendant makes the following arguments in her Reply to the Trustee's Opposition:

Had the Complaint sought to avoid only one specific \$50,000 transfer, Defendant would not have been required to argue that the Complaint's allegations of fraud were not pleaded with the necessary specificity. However, the Complaint leaves open the possibility that the Trustee may allege additional transfers that the Trustee has not yet identified. The Court should impose reasonable conditions on the filing of a future complaint and prohibit the inclusion of any unidentified transfers.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

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Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces “does not require ‘detailed factual allegations,’ ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Civil Rule 9(b) provides: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”

The Ninth Circuit has explained the application of Civil Rule 9(b) as follows:

[W]hen averments of fraud are made, the circumstances constituting the alleged fraud “be ‘specific enough to give defendants notice of the particular misconduct ... so that they can defend against the charge and not just deny that they have done anything wrong.’ ” *Bly–Magee*, 236 F.3d at 1019 (quoting *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir.1993)). Averments of fraud must be accompanied by “the who, what, when, where, and how” of the misconduct charged. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir.1997) (internal quotation marks omitted). “[A] plaintiff must set forth *more* than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false.” *Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42 F.3d 1541, 1548 (9th Cir.1994).

Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003).

The Complaint’s allegations pertaining to the fraudulent transfer are sufficiently pleaded. The Complaint alleges that K. Hwang and J. Cho exercised control over the Debtor’s bank accounts; that K. Hwang and J. Cho caused the funds of the Debtor to be misdirected to fund the personal expenses of themselves and their families; and that on July 31, 2014, K. Hwang caused the Debtor to transfer \$50,000 to the Defendant, his daughter, even though the Defendant had not provided reasonably equivalent value to the Debtor. These allegations identify the “who, what, when, where, and how” of the alleged fraud, and are sufficiently specific to state claims for relief under §§ 544, 548(a)(1)(A), and 548(a)(1)(B).

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Defendant asserts that the Trustee's reservation of the right to amend the Complaint to allege additional transfers does not put Defendant on sufficient notice of the misconduct alleged. Defendant seeks to bar the Trustee from filing an amended complaint that alleges additional transfers.

The Court declines to impose restrictions upon, or rule upon the propriety of, a hypothetical complaint that has not been filed. The Court's role "is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies" *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). If the Trustee files an amended complaint alleging additional transfers, the Defendant is free to assert that the amended complaint's new allegations are time-barred because they do not relate back to the Complaint under Civil Rule 15(c). Unless that situation arises, the Court will not determine whether allegations of additional transfers are appropriate.

Based upon the foregoing, the Motion is DENIED. Within seven days of the hearing, the Trustee shall submit a proposed order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Represented By
Christian T Kim

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By

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Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01399 Mastan, Chapter 7 Trustee v. Hwang

#38.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01399. Complaint by Peter J. Mastan, Chapter 7 Trustee against Hyun Hwang. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19

Docket 1

Tentative Ruling:

12/3/2019

See Cal. No. 37, above, incorporated in full by reference.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Hyun Hwang

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

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Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#39.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01400. Complaint by Peter J. Mastan, Chapter 7 Trustee against Mirea Rea Hwang, Does 1 - 10, inclusive. (Charge To Estate). Complaint for: (1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. 544(b), 548(a)(1)(A), and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07]; (2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544(b), 548(a)(1)(B), and 550(a), and Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07]; and (3) Recovery of Avoided Transfer [11 U.S.C. § 550(a)] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Triplett, Meghann)

FR. 11-19-19; 11-26-19

Docket 1

Tentative Ruling:

12/3/2019

See Cal. No. 40, below, incorporated in full by reference.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Pro Se

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

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CONT... Keystone Textile, Inc.

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Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21270 Keystone Textile, Inc.

Chapter 7

Adv#: 2:19-01400 Mastan, Chapter 7 Trustee v. Hwang et al

#40.00 Hearing RE: [11] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion to Dismiss Complaint; Request for Judicial Notice in Support Thereof

fr. 11-20-19; 11-26-19

Docket 11

Tentative Ruling:

12/3/2019

Unless and until the Trustee obtains relief from the automatic stay arising in K. Hwang's individual bankruptcy case, this action is STAYED. The Court will conduct a Status Conference on **February 11, 2020, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers (the "Complaint") [Doc. No. 1]
- 2) Defendant Mirea Hwang's Notice of Motion and Motion to Dismiss Complaint (the "Motion") [Doc. No. 11]
- 3) Plaintiff's Opposition to Mirea Hwang's Motion to Dismiss Complaint (the "Opposition") [Doc. No. 14]
- 4) Defendant Mirea Hwang's Reply to Plaintiff's Opposition to Motion to Dismiss Complaint (the "Reply") [Doc. No. 15]

I. Facts and Summary of Pleadings

Keystone Textile, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 14, 2017 (the "Petition Date"). On September 14, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers* [Doc. No. 1] (the "Complaint") against Mirea Rea Hwang (the "Defendant").

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CONT... **Keystone Textile, Inc.**

Chapter 7

A. Summary of the Complaint

1. Allegations

The material allegations of the Complaint are as follows:

Until March 2017, the Debtor was engaged in the business of manufacturing and selling wholesale fabrics and accessories. Complaint at ¶ 10. From September 2008 through the conclusion of 2015, Jason Young Cho aka Youngduk Duk Cho aka Jason Duk Cho ("J. Cho") was the Chief Executive Officer and sole shareholder of the Debtor. *Id.* at ¶ 11. J. Cho is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 12.

J. Cho and Kenny Hwang aka Kyoung Sub Hwang ("K. Hwang") had a verbal agreement to share ownership and control of the Debtor, with J. Cho holding a 30% ownership interest and K. Hwang holding a 70% ownership interest. *Id.* at ¶ 13. In furtherance of a scheme to avoid paying more than \$1 million in taxes, K. Hwang did not disclose his ownership interest in the Debtor until 2016. *Id.* At the end of 2015 or the beginning of 2016, J. Cho transferred his interest in the Debtor to K. Hwang for no consideration. *Id.* at ¶ 14. K. Hwang is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 16.

At all relevant times, J. Cho and K. Hwang jointly managed the Debtor and had access to and control over the Debtor and the Debtor's bank accounts. *Id.* at ¶ 17.

Between 2013 and the Petition Date, J. Cho and K. Hwang misdirected funds of the Debtor to pay for the personal expenses of themselves and their relatives. *Id.* at ¶ 18. The misdirection of funds occurred while the Debtor was insolvent, undercapitalized, and unable to pay its debts as they became due in the ordinary course of business. *Id.*

Between 2013 and the Petition Date, K. Hwang caused the Debtor to transfer substantial amounts of money to his wife, children, and other relatives in the guise of "loans" that were never repaid. *Id.* at ¶ 19.

During the four-year period immediately preceding the Petition Date, J. Cho and/or K. Hwang caused the Debtor to transfer the sum of \$91,211.30 to the Defendant (the "Transfers"). *Id.* at ¶ 22. The Defendant is K. Hwang's spouse and is an insider of the Debtor. *Id.* at ¶ 22–23. The Transfers exceeded the amount of value, if any, that Defendant provided to the Debtor, and the Debtor did not receive reasonably equivalent value in exchange for the Transfers. *Id.* at ¶ 27.

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2. Claims for Relief

Based upon the foregoing allegations, the Complaint asserts claims (1) to avoid the Transfers as intentionally fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(a) and 3439.07) and § 548(a)(1)(A), (2) to avoid the Transfer as constructively fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(b), 3439.05, and 3439.07) and § 548(a)(1)(B), and (3) to recover the avoided Transfers, pursuant to § 550(a)(2).

The Trustee also asserts a "right to amend this Complaint to allege additional claims against the Defendant and to challenge and recover transfers made to or for the benefit of the Defendant in addition to those transfers alleged in this Complaint." Complaint at ¶ 9.

B. Summary of Defendant's Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant makes the following arguments in support of the Motion:

Defendant's spouse, K. Hwang, filed a voluntary Chapter 7 petition on September 18, 2019. All community property of a debtor is property of that debtor's bankruptcy estate. Through this action, the Trustee seeks to recover from the Defendant community property that is property of K. Hwang's estate. The Trustee's continued prosecution of the action violates the automatic stay in K. Hwang's bankruptcy petition. Consequently, the action should be dismissed.

In addition, the Complaint fails to plead the alleged fraud with the necessary specificity, as required by Civil Rule 9(b). The Complaint does not allege "the who, what, when, where, and how" of the alleged fraud.

Further, the Trustee has improperly reserved the right to assert claims regarding additional, undiscovered transfers. The Complaint was filed two days prior to the expiration of the statute of limitations. By seeking to preserve the possibility of filing an amended complaint alleging additional transfers, the Trustee is attempting to circumvent the statute of limitations. The Court should prohibit any future amendments that seek to add claims relating to additional transfers.

C. Summary of the Trustee's Opposition

The Trustee makes the following arguments in his Opposition to the Motion:

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Defendant argues without any support that the Trustee's prosecution of the claims against the Defendant in this action violate the automatic stay. This argument is without merit, and the Motion to Dismiss was filed in bad faith.

The Complaint's allegations of fraud are detailed and specific, and state plausible claims for relief.

Defendant's request that the Court bar a future amended complaint alleging additional transfers is not proper. In making such a request, the Defendant is asking the Court to adjudicate a matter that is not before it.

D. Summary of the Defendant's Reply:

The Defendant makes the following arguments in her Reply to the Trustee's Opposition:

The Trustee asserts that continued prosecution of the action does not violate the automatic stay in K. Hwang's case, but cites no legal authority for this proposition. Community property of the non-debtor spouse is unquestionably property of the estate under § 541(a).

In the event the Motion to Dismiss is denied or the Court grants the Trustee leave to amend, the Court should prohibit any future complaint from including transfers not already alleged in the Complaint.

II. Findings and Conclusions

Unless and until the Trustee obtains relief from the automatic stay arising in K. Hwang's individual bankruptcy case, the Court will not proceed with the adjudication of the Complaint. Adjudication of the Complaint would violate the automatic stay arising in K. Hwang's bankruptcy petition. Under § 541(a)(2), the property of K. Hwang's estate includes the community property of K. Hwang's spouse, M. Hwang. Therefore, the stay created by K. Hwang's bankruptcy petition prevents adjudication of the Trustee's claims against M. Hwang.

The Court declines to dismiss the Complaint solely as a result of the automatic stay in K. Hwang's case. Dismissal is too extreme a remedy. To the extent the Motion seeks dismissal solely as a result of the automatic stay created by K. Hwang's bankruptcy petition, it is denied.

It is not appropriate for the Court to address the remaining arguments in support of the Motion to Dismiss unless and until the Trustee has obtained stay relief in K. Hwang's bankruptcy case. If the Trustee obtains stay relief in K. Hwang's bankruptcy

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CONT... **Keystone Textile, Inc.** **Chapter 7**

case, the Court will restore the Motion to the calendar for the purpose of adjudicating Defendants' remaining arguments for dismissal.

The Court will conduct a Status Conference in this action on **February 11, 2020, at 10:00 a.m.** The parties shall file a Joint Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

Mirea Rea Hwang

Represented By
Christian T Kim

Does 1 - 10, inclusive

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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10:00 AM

2:17-21270 Keystone Textile, Inc.

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Adv#: 2:19-01393 Mastan, Chapter 7 Trustee v. Hwang et al

#40.10 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

FR. 11-13-19; 11-20-19; 11-26-19

Docket 18

Tentative Ruling:

12/3/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED IN PART and DENIED IN PART.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers [Doc. No. 1] (the "Complaint")
- 2) Defendant In Young Hwang's Notice of Motion and Motion to Dismiss Complaint (the "Motion") [Doc. No. 18]
- 3) Plaintiff's Opposition to Defendant In Young Hwang's Motion to Dismiss Complaint (the "Opposition") [Doc. No. 25]
- 4) Defendant In Young Hwang's Reply to Opposition to Motion to Dismiss Complaint (the "Reply") [Doc. No. 29]

I. Facts and Summary of Pleadings

Keystone Textile, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 14, 2017 (the "Petition Date"). On September 13, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, and (3) Recovery of Avoided Transfers* (the "Complaint") [Doc. No. 1] against In Young Hwang ("I. Hwang"), Twig & Twine, Inc., and Danielle Steckler dba Paper Palate (collectively, the "Defendants").

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CONT... **Keystone Textile, Inc.**

Chapter 7

A. Summary of the Complaint

1. Allegations

The material allegations of the Complaint are as follows:

Until March 2017, the Debtor was engaged in the business of manufacturing and selling wholesale fabrics and accessories. Complaint at ¶ 12. From September 2008 through the conclusion of 2015, Jason Young Cho aka Youngduk Duk Cho aka Jason Duk Cho ("J. Cho") was the Chief Executive Officer and sole shareholder of the Debtor. *Id.* at ¶ 13. J. Cho is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 14.

J. Cho and Kenny Hwang aka Kyoung Sub Hwang ("K. Hwang") had a verbal agreement to share ownership and control of the Debtor, with J. Cho holding a 30% ownership interest and K. Hwang holding a 70% ownership interest. *Id.* at ¶ 15. In furtherance of a scheme to avoid paying more than \$1 million in taxes, K. Hwang did not disclose his ownership interest in the Debtor until 2016. *Id.* At the end of 2015 or the beginning of 2016, J. Cho transferred his interest in the Debtor to K. Hwang for no consideration. *Id.* at ¶ 18. K. Hwang is an insider of the Debtor within the meaning of § 101(31)(B). *Id.* at ¶ 16.

At all relevant times, J. Cho and K. Hwang jointly managed the Debtor and had access to and control over the Debtor and the Debtor's bank accounts. *Id.* at ¶ 19.

Between 2013 and the Petition Date, J. Cho and K. Hwang misdirected funds of the Debtor to pay for the personal expenses of themselves and their relatives. *Id.* at ¶ 20. The misdirection of funds occurred while the Debtor was insolvent, undercapitalized, and unable to pay its debts as they became due in the ordinary course of business. *Id.*

Between 2013 and the Petition Date, K. Hwang caused the Debtor to transfer substantial amounts of money to his wife, children, and other relatives in the guise of "loans" that were never repaid. *Id.* at ¶ 21.

In September 2014, K. Hwang and/or J. Cho caused the Debtor to make payments to several vendors to perform various services at the wedding of Defendant I. Young (the "Wedding Transfers"). *Id.* at ¶ 24. I. Young is K. Hwang's daughter and is an insider of the Debtor. *Id.* The Debtor did not receive any value for the Transfers. *Id.* at ¶ 29.

Between 2013 and the Petition Date, K. Hwang and/or J. Cho caused the Debtor to transfer funds directly to I. Hwang. *Id.* at ¶ 27. The transfers were characterized as a

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"loan payment" (the "Loan Transfers"). *Id.* at Ex. A. The Debtor did not receive any value in exchange for these Transfers. *Id.*

2. Claims for Relief

Based upon the foregoing allegations, the Complaint asserts claims (1) to avoid the Transfers as intentionally fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(a) and 3439.07) and § 548(a)(1)(A), (2) to avoid the Transfers as constructively fraudulent, pursuant to § 544(b) (applying Cal. Civ. Code §§ 3439.04(b), 3439.05, and 3439.07) and § 548(a)(1)(B), and (3) to recover the avoided Transfers, pursuant to § 550(a)(2).

The Trustee also asserts a "right to amend this Complaint to allege additional claims against the Defendant and to challenge and recover transfers made to or for the benefit of the Defendant in addition to those transfers alleged in this Complaint." Complaint at ¶ 11.

B. Summary of I. Hwang's Motion to Dismiss

Defendant I. Hwang moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. I. Hwang makes the following arguments in support of the Motion:

The Complaint does not allege that I. Hwang directly received the Wedding Transfers. The only plausible theory of liability against I. Hwang with respect to the Wedding Transfers is that she was a person "for whose benefit" the Wedding Transfers were made.

The fact that the Wedding Transfers were used to pay for services performed at I. Hwang's wedding does not qualify I. Hwang as a person "for whose benefit" the Transfers were made under § 550(a). "[T]ransfer beneficiary status depends on three aspects of the 'benefit': (1) it must actually have been received by the beneficiary; (2) it must be quantifiable; and (3) it must be accessible to the beneficiary." *In re Brooke Corp.*, 488 B.R. 459, 468 (Bankr. D. Kan. 2013).

The benefit I. Hwang received from the services performed at her wedding was not direct and cannot be quantified into a specific dollar amount. In addition, I. Hwang did not have control or dominion over the Wedding Transfers. Therefore, the benefit was not accessible to I. Hwang. There is no basis for holding I. Hwang liable for any portion of the \$37,174.65 used to pay for services at I. Hwang's wedding.

In addition, the Trustee has improperly reserved the right to assert claims

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regarding additional, undiscovered transfers. The Complaint was filed two days prior to the expiration of the statute of limitations. By seeking to preserve the possibility of filing an amended complaint alleging additional transfers, the Trustee is attempting to circumvent the statute of limitations. The Court should prohibit any future amendments that seek to add claims relating to additional transfers.

C. Summary of the Trustee's Opposition

The Trustee makes the following arguments in his Opposition to the Motion:

The Trustee has alleged that I. Young benefitted from approximately \$40,000 in Wedding Transfers and approximately \$25,000 in Loan Transfers.

Under section 550(a)(1), the Trustee can recover an avoided transfer from the "initial transferee," or an "entity for whose benefit [a] transfer was made." *Danning v. Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 547 (9th Cir. 1991). The phrase "entity for whose benefit [a] transfer was made," refers to those who receive a benefit as a result of the initial transfer from the debtor—not as the result of a subsequent transfer." *In re Bullion Reserve of North America*, 922 F.2d 544, 547 (9th Cir. 1991). Moreover, as the Ninth Circuit recognized in *Bullion Reserve*, such parties are liable, whether or not they actually benefit from the transfers in question. *Id.* The language of section 550(a)(1) "implies a requirement that, in transferring the avoided funds, the debtor must have been motivated by an intent to benefit the individual or entity from whom the trustee seeks to recover." *Halperin v. Moreno (In re Green Field Energy Servs.)*, 2015 Bankr. LEXIS 2914, *50-51. Additionally, "an entity need not actually benefit, so long as the transfer was made for his benefit." *Burdette v. Emerald Partners, LLC (In re Cascade Ag Servs.)*, 2017 Bankr. LEXIS 3804, *21-22 (internal citations omitted). The Trustee's power to recover from the entity "for whose benefit such transfer was made" is absolute. *See Matter of Walldesign, Inc.*, 872 F.3d 954, 962 (9th Cir. 2017) (When a trustee has proven the avoid ability of a transfer, the Ninth Circuit has interpreted § 550(a) to provide trustees "an absolute right of recovery against the 'initial transferee' and any 'entity for whose benefit such transfer was made.'" (quoting *Danning v. Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 547 (9th Cir. 1991)).

The Complaint alleges sufficient facts to state a claim to avoid the Wedding Transfers as either actually or constructively fraudulent under applicable California law. The payments to the wedding vendors were made specifically for I. Young's benefit.

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The allegations with respect to the Loan Transfers are likewise sufficiently pleaded.

D. Summary of I. Young's Reply

I. Young makes the following arguments in Reply to the Trustee's Opposition:

The Court can find I. Young liable for the Wedding Transfers only if the Court finds that I. Young is a person for whose benefit the Wedding Transfers were made. The Trustee has failed to rebut the proposition that a "benefit" must be tangible and quantifiable for fraudulent transfer purposes.

I. Young has not located a case directly on point; however, the case of *Lo v. Lee*, 24 Cal. App. 5th 1065, 1072–74, 234 Cal. Rptr. 3d 824, 827–29 (Ct. App. 2018) is instructive. In *Lo*, the court found that payments made by a debtor father for his son's tuition could be avoidable, but the son could not be held liable as a beneficiary of those payments. In construing the Uniform Voidable Transfers Act (the "UVTA"), the *Lo* court applied bankruptcy cases interpreting § 550(a). The court found that the son was not an "entity for whose benefit" the transfers were made, because the benefit was not quantifiable and was not accessible to the son:

As to the second prong, courts have stated that in order for a benefit to be "quantifiable," "[a] merely theoretical benefit is not sufficient, since it would not be subject to disgorgement." (*McCook Metals, supra*, 319 B.R. at p. 591.) Clearly, there is no way to quantify the intellectual and other benefits You [the son] received from the educational opportunity afforded him by Lee's transfer. Even plaintiff concedes "a creditor cannot levy on the student's college education." Any such benefits are entirely intangible and theoretical, and could never be disgorged by him as they cannot be valued solely in terms of dollars and cents.

Additionally, the benefit You received is not, and never was, "accessible" to him. Lee's funds were transmitted directly to Northeastern, and there are no allegations suggesting that the funds were ever controlled by You. In addressing this prong, the *McCook Metals* court noted that "[e]ven if a quantifiable benefit is actually received, it could not fairly be disgorged if the beneficiary never had access to it." (*McCook Metals, supra*, 319 B.R. at p. 592.) Here, You had no control over the funds that Lee transferred to the school, and the FAC does not allege that he had access to these funds at any

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point in time.

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Lo v. Lee, 24 Cal. App. 5th 1065, 1074–75, 234 Cal. Rptr. 3d 824, 829–30 (Ct. App. 2018).

Like the educational benefits in *Lo*, the benefit received from a wedding is intangible and unquantifiable. In addition, the Trustee does not allege that I. Young ever had control or access to the Wedding Transfers.

II. Findings and Conclusions

A. The Motion is Granted in Part and Denied in Part

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

With respect to the Wedding Transfers, the Complaint fails to state a claim upon

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which relief can be granted. The Wedding Transfers occurred outside the two-year reachback period set forth in § 548. Consequently, the Trustee can avoid the Wedding Transfers only under California’s Uniform Voidable Transfers Act (the “UVTA”), pursuant to § 544(b).

Where, as here, the Defendant did not directly receive the transfers at issue, fraudulent transfer liability attaches only if the Defendant is “the person for whose benefit the transfer was made.” Cal. Civ. Code § 3439.08. As explained by the court in *Lo v. Lee*:

[T]he fact that a person received any kind of “benefit,” no matter how intangible or indirect, from a fraudulent transaction does not necessarily subject that person to liability. There are limits to the legal assessment of the type of “benefit” that will subject a beneficiary to liability for the debtor’s alleged fraudulent transfer. The benefit received must be “direct, ascertainable and quantifiable” and must bear a “ ‘necessary correspondence to the value of the property transferred.’ ” (*In re Intern. Management Assoc.* (11th Cir. 2005) 399 F.3d 1288, 1293.) “ [T]ransfer beneficiary status depends on three aspects of the “benefit”: (1) it must actually have been received by the beneficiary; (2) it must be quantifiable; and (3) it must be accessible to the beneficiary.’ ” (*In re Brooke Corp.* (Bankr. D. Kan. 2013) 488 B.R. 459, 468 (*In re Brooke*)). This three-part test is used in federal courts to determine whether a party should be subjected to liability as the ultimate beneficiary of an alleged fraudulent transfer. (*Baldi v. Lynch (In re McCook Metals, L.L.C.)* (Bankr. N.D.Ill 2005) 319 B.R. 570, 590–594 (*McCook Metals*); see *Bonded Financial Services v. European Amer. Bank* (7th. Cir 1988) 838 F.2d 890, 896 (*Bonded Financial Services*); *Sher v. SAF Fin. Inc.* (D.Md. 2011) 2011 U.S. Dist. Lexis 116967, *8.) The benefit that is actually received must flow from the initial transfer which is avoided, instead of being a secondary result of the alleged transfer. (*Bonded Financial Services*, at p. 896.) The nature of the legal benefit is predicated on the “disgorgement-based understanding of recovery of fraudulent transfers from those benefitting from the transfer. ... [T]he benefit actually received must flow from the initial transfer which is avoided.” (*In re Brooke*, at p. 469.) The three-part test must be satisfied for recovery of a transferred property under 11 U.S.C. section 550(a)(1) from the ultimate beneficiary.

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Lo v. Lee, 24 Cal. App. 5th 1065, 1073–74, 234 Cal. Rptr. 3d 824, 829 (Ct. App. 2018).

The *Lo* court held that the recipient of educational benefits was not liable for tuition payments made directly from a debtor to the recipient's school. The court reasoned that such benefits are "entirely intangible and theoretical, and could never be disgorged" *Lo*, 24 Cal. App. 5th at 1074–75. In addition, the court held that the tuition transfers were not "accessible" to the recipient of the education because they were paid directly to the school. *Id.*

The Wedding Transfers at issue here are similar to the tuition payments at issue in *Lo*. The benefits of a wedding, like those of an education, are "entirely intangible and theoretical" and cannot be disgorged. In addition, the Wedding Transfers were not accessible to I. Hwang, because they were paid directly to the vendors who provided services at the wedding. *Cf. Lo*, 24 Cal. App. 4th at 1075 ("Here, You had no control over the funds that [the debtor] Lee transferred to the school, and the FAC does not allege that he had access to these funds at any point in time.").

Because the Trustee's theory fails as a matter of law, the allegations with respect to the Wedding Transfers are dismissed without leave to amend. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (holding that the Court may dismiss a complaint without leave to amend where any proposed amendment would be futile).

In addition to the Wedding Transfers, the Complaint alleges that I. Young received approximately \$25,000 in Loan Transfers. The allegations with respect to the Loan Transfers state a claim upon which relief can be granted. The Trustee has alleged that I. Young provided no value to the Debtor in exchange for the Loan Transfers; that the Debtor was insolvent at the time of the Loan Transfers; and that the Debtor's books and records contain no evidence that I. Young was extended a loan.

I. Young asserts that the Trustee's reservation of the right to amend the Complaint to allege additional transfers does not put I. Young on sufficient notice of the misconduct alleged. I. Young seeks to bar the Trustee from filing an amended complaint that alleges additional transfers.

The Court declines to impose restrictions upon, or rule upon the propriety of, a hypothetical complaint that has not been filed. The Court's role "is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies" *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). If the Trustee files an amended complaint alleging additional transfers, I. Young is free to assert that the amended complaint's new allegations are time-barred because they do not relate back to the Complaint under

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Civil Rule 15(c). Unless that situation arises, the Court will not determine whether allegations of additional transfers are appropriate.

III. Conclusion

Based upon the foregoing, the allegations with respect to the Wedding Transfers are dismissed without leave to amend. The remaining allegations against I. Young state a claim upon which relief can be granted. As previously ordered, a Status Conference in this matter shall take place on January 14, 2020. Doc. No. 28.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keystone Textile, Inc.

Represented By
Christian T Kim

Defendant(s):

In Young Hwang

Represented By
Christian T Kim

Twig & Twine, Inc.

Represented By
Michael H Yi

Danielle Steckler

Represented By
Michael H Yi

DOES 1 through 10

Pro Se

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By

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Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

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2:17-21275 Tbetty, Inc.

Chapter 7

Adv#: 2:19-01404 Mastan, Chapter 7 Trustee v. Hwang et al

#41.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding

FR. 11-20-19; 11-26-19

Docket 18

Tentative Ruling:

12/3/2019

Unless and until the Trustee obtains relief from the automatic stay arising in K. Hwang's individual bankruptcy case, this action is STAYED. The Court will conduct a Status Conference on **February 11, 2020, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2) Avoidance of Constructive Fraudulent Transfers, (3) Avoidance of Preferential Transfers, (4) Recovery from Subsequent Transferee, (5) Recovery of Avoided Transfers, (6) Conspiracy to Defraud, (7) Recovery of Illegal Dividends, and (8) Unjust Enrichment (the "Complaint") [Doc. No. 1]
- 2) Defendants Kenny Hwang, Mirea Hwang, Hyun Hwang, and Tri Blossom LLC's Notice of Motion and Motion to Dismiss Complaint (the "Motion") [Doc. No. 18]
- 3) Plaintiff's Opposition to Defendants Kenny Hwang, Mirea Hwang, Hyun Hwang, and Tri Blossom LLC's Notice of Motion and Motion to Dismiss Complaint (the "Opposition") [Doc. No. 24]
- 4) Defendants Kenny Hwang, Mirea Hwang, Hyun Hwang, and Tri Blossom LLC's Reply to Plaintiff's Opposition to Motion to Dismiss Complaint (the "Reply") [Doc. No. 26]

I. Facts and Summary of Pleadings

Tbetty, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on September 14, 2017 (the "Petition Date"). On September 15, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Complaint for: (1) Avoidance of Actual Fraudulent Transfers, (2)*

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Avoidance of Constructive Fraudulent Transfers, (3) Avoidance of Preferential Transfers, (4) Recovery from Subsequent Transferee, (5) Recovery of Avoided Transfers, (6) Conspiracy to Defraud, (7) Recovery of Illegal Dividends, and (8) Unjust Enrichment (the "Complaint") against Kenny Hwang ("K. Hwang"), Mirea Hwang ("M. Hwang"), Hyun Hwang ("H. Hwang"), Tri Blossom, LLC, and K2 America, Inc. (collectively, the "Defendants").

The Complaint seeks to avoid and recover more than \$8 million of transfers from the Debtor to the Defendants. The Complaint alleges, *inter alia*, that K. Hwang caused the Debtor to fraudulently transfer assets to the Defendants to fund personal expenses unrelated to the Debtor's business.

A. Summary of Defendants' Motion to Dismiss

Defendants move to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendants make the following arguments in support of the Motion:

K. Hwang filed a voluntary Chapter 7 petition on September 18, 2019. This action is stayed by the automatic stay arising in K. Hwang's bankruptcy case. The Trustee is effectively seeking to pursue the assets of K. Hwang's bankruptcy estate by seeking damages against him personally. All claims against K. Hwang should be dismissed.

M. Hwang, K. Hwang's spouse, should be dismissed as a defendant as to each of the claims for relief to the extent that the Trustee seeks to pursue the community property assets of K. Hwang, as those non-exempt assets are property of K. Hwang's bankruptcy estate.

B. Summary of the Trustee's Opposition

The Trustee makes the following arguments in his Opposition to the Motion:

The Trustee was not provided notice of K. Hwang's bankruptcy petition. Since learning of K. Hwang's bankruptcy, the Trustee has taken no actions to prosecute the claims against K. Hwang. The Trustee intends to file a motion for relief from the automatic stay in K. Kwang's case.

Notwithstanding the foregoing, K. Hwang has waived the protections of the automatic stay by filing the Motion to Dismiss. *See In re Cobb*, 88 B.R. 119, 121 (Bankr. W.D. Tex. 1988) ("[W]hen the debtor-in-possession appears and defends a suit on any basis other than application of the automatic stay, then the debtor-in-

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possession waives the automatic stay. To hold otherwise would allow a debtor-in-possession to have trump card that he could play if he did not like the outcome of the action, but allowing him take a favorable judgment.”).

C. Summary of the Defendants’ Reply

Defendants make the following arguments in their Reply to the Trustee’s Opposition:

K. Hwang and M. Hwang have not waived the automatic stay. Courts have found that a debtor cannot waive the stay. *See Marcus, Stowell & Beye Gov’t Secs., Inc. v. Jefferson Inv. Corp.*, 797 F.2d 227, 230 n.4 (5th Cir. 1986) (stating that a debtor may not unilaterally waive the stay even in cases where the debtor initiated the proceedings). K. Hwang and M. Hwang should be dismissed based on the continuing violation of the automatic stay.

II. Findings and Conclusions

Unless and until the Trustee obtains relief from the automatic stay arising in K. Hwang’s individual bankruptcy case, the Court will not proceed with the adjudication of the Complaint. Adjudication of the Complaint with respect to the claims against K. Hwang and M. Hwang would violate the automatic stay arising in K. Hwang’s bankruptcy petition. Under § 541(a)(2), the property of K. Hwang’s estate includes the community property of K. Hwang’s spouse, M. Hwang. Therefore, the stay created by K. Hwang’s bankruptcy petition prevents adjudication of the Trustee’s claims against M. Hwang.

Contrary to the Trustee’s argument, K. Hwang has not waived the protections of the automatic stay by filing the Motion to Dismiss. In *In re Cobb*, the case cited by the Trustee, the Court held that a debtor who defended litigation “on any basis *other than application of the automatic stay*” waived the protections of the stay. 88 B.R. 119, 121 (Bankr. W.D. Tex. 1998). Here, K. Hwang has invoked the automatic stay as a defense against the litigation. Therefore, *In re Cobb* is inapposite.

Defendants argue that the claims against K. Hwang and M. Hwang should be dismissed as a result of the automatic stay in K. Hwang’s case. Dismissal of such claims is too extreme a remedy. To the extent the Motion seeks dismissal solely as a result of the automatic stay created by K. Hwang’s bankruptcy petition, it is denied.

The automatic stay does not bar the continued prosecution of the Trustee’s claims against Defendants Tri Blossom LLC and Hyun Hwang. However, the claims against

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these Defendants are based upon the same core of operative facts as the claims against K. Hwang and M. Hwang. Adjudication of the action only against Tri Blossom LLC and Hyun Hwang would not be feasible. Therefore, the Court will not proceed with any aspect of the action unless and until the Trustee obtains stay relief in K. Hwang's bankruptcy case.

Defendants assert additional arguments in support of the Motion to Dismiss. Addressing those arguments while the stay in K. Hwang's bankruptcy case remains in effect would not be appropriate.

If the Trustee obtains stay relief in K. Hwang's bankruptcy case, the Court will restore the Motion to the calendar for the purpose of adjudicating Defendants' remaining arguments for dismissal.

The Court will conduct a Status Conference in this action on **February 11, 2020, at 10:00 a.m.** The parties shall file a Joint Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tbetty, Inc.

Represented By
Christian T Kim

Defendant(s):

Kenny Hwang

Represented By
Christian T Kim

Hyun Hwang

Represented By
Christian T Kim

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Chapter 7

Tri Blossom, LLC

Represented By
Christian T Kim

K2 America, Inc.

Represented By
Michael H Yi

Does 1-10, Inclusive

Pro Se

Mi Rae Hwang

Represented By
Christian T Kim

Plaintiff(s):

Peter J. Mastan, Chapter 7 Trustee

Represented By
Meghann A Triplett

Trustee(s):

Peter J Mastan (TR)

Represented By
Meghann A Triplett
Noreen A Madoyan

**United States Bankruptcy Court
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Monday, December 9, 2019

Hearing Room 1568

10:00 AM

2:19-20407 Richard Sang Kim

Chapter 7

#1.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 924 S. Carondelet Street # 219, Los Angeles, CA 90006 with Exhibit A through E and Proof of Service of Document.

Docket 13

***** VACATED *** REASON: Cont'd to 12/10/2019 at 11:00am**

Party Information

Debtor(s):

Richard Sang Kim	Pro Se
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Trustee(s):

David M Goodrich (TR)	Pro Se
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**United States Bankruptcy Court
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Monday, December 9, 2019

Hearing Room 1568

10:00 AM

2:19-22902 Gregory Roman Formano

Chapter 7

#2.00 Hearing

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: 1HGC R3F8 1EA0 06698 .

Docket 9

***** VACATED *** REASON: Cont'd to 12/10/2019 at 11:00 am**

Party Information

Debtor(s):

Gregory Roman Formano

Represented By
Daniel King

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Monday, December 9, 2019

Hearing Room 1568

10:00 AM

2:19-21828 Marta A Turcios Guevara

Chapter 7

#3.00 Hearing
RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2905 La Puesta Del Sol, Palm Springs, CA 92262 . (Khil, Christina)

Docket 12

***** VACATED *** REASON: Cont'd to 12/10/2019 at 11:00 am**

Party Information

Debtor(s):

Marta A Turcios Guevara	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Monday, December 9, 2019

Hearing Room 1568

10:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#4.00 Hearing
RE: [40] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2825 and 2825 1/2 Live Oak Street, Huntington Park, CA 90255 . (Rubanowitz, Shalom)

fr. 11-25-19

Docket 40

***** VACATED *** REASON: Cont'd to 12/10/2019 at 11:00 am**

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#1.00 Status Conference
RE: [11] Motion to Change Venue/Inter-district Transfer Adversary Proceeding
to W.D. Wash. (Plevin, Mark)

fr: 8-15-18; 11-13-18; 2-12-19; 6-11-19

Docket 11

Tentative Ruling:

12/6/2019

On July 30, 2018, the Bankruptcy Court for the Western District of Washington entered a § 105 injunction staying this proceeding (the "Stay Order"). An appeal of the Stay Order is currently pending before the Ninth Circuit.

Litigation before this Court cannot proceed until the appeal of the Stay Order has been finally resolved. Consistent with the Court's prior orders, all deadlines in this action remain tolled until the appeal of the Stay Order has been finally resolved.

A continued Status Conference shall be held on **May 12, 2020, at 10:00 a.m.** By no later than fourteen days prior to the continued Status Conference, all parties shall file a Joint Status Report, which shall discuss (a) the status of the appeal of the Settlement Orders (as that term is defined in the *Motion by Century Indemnity Company to Transfer Venue to the Debtor's Home Court, the Western District of Washington* [Doc. No. 11] and (b) any events occurring in the Chapter 11 bankruptcy case of *Fraser's Boiler Service, Inc.*, Case No. 18-41245-BDL (Bankr. W.D. Wash.) that are relevant to the disposition of this action.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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10:00 AM

CONT...

Chapter 0

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's, Hartford Accident And Indemnity	Pro Se Represented By Philip E Smith
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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Hearing Room 1568

10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17; 6-6-18; 9-11-18; 1-15-19; 6-11-19

Docket 1

Tentative Ruling:

12/6/2019

In this dischargeability action, Plaintiffs allege that Defendant committed willful and malicious injury by secretly videotaping Plaintiffs changing and using the restroom. The Court has stayed this action pending resolution of the underlying state court action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable (the "State Court Action"). Discovery is currently being conducted in the State Court Action, and trial is set for May 4, 2020.

Having reviewed the Joint Status Report submitted by the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **June 16, 2020, at 10:00 a.m.**
- 2) By no later than fourteen days prior to the hearing, the parties shall submit a Joint Status Report, which shall describe in detail the status of the State Court Action.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Kevin Thomas Roy

Chapter 7

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

Adv#: 2:19-01290 Goodrich v. Liu

#3.00 Status Hearing RE: [1] Adversary case 2:19-ap-01290. Complaint by David M. Goodrich against Nancy Liu. (Charge To Estate). Complaint for Declaratory Relief Nature of Suit: (91 (Declaratory judgment)) (Gaschen, Beth)

Docket 1

Tentative Ruling:

12/6/2019

The Clerk of the Court entered Defendant's default on October 3, 2019. Doc. No. 11. The Chapter 7 Trustee (the "Trustee") filed a Motion for Default Judgment on November 25, 2019. Doc. No. 13.

Having reviewed the Unilateral Status Report submitted by the Trustee, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) A continued Status Conference shall be held on **February 11, 2020, at 10:00 a.m.** By no later than fourteen days prior to the hearing, the Trustee shall submit a Unilateral Status Report.
- 2) In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... CRESTALLIANCE, LLC

Chapter 7

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Matthew D. Resnik

Defendant(s):

Nancy Liu

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Beth Gaschen

Trustee(s):

David M Goodrich (TR)

Represented By
Beth Gaschen

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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:18-12437 Wardine Bridges

Chapter 7

Adv#: 2:19-01336 Rund v. Rosborough

#4.00 Status Hearing RE: [1] Adversary case 2:19-ap-01336. Complaint by Jason M. Rund against Mary Rosborough. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Chung, Toan)

Docket 1

Tentative Ruling:

12/6/2019

The Clerk of the Court entered Defendant's default on November 27, 2019. Doc. No. 13. The Chapter 7 Trustee has engaged in settlement discussions with one of the Defendant's relatives, Dominic Anderson. The parties have agreed upon a settlement amount, but it is unclear whether Anderson can fund the settlement.

Based upon the foregoing, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The deadline for Anderson to demonstrate to the Trustee's satisfaction that he has the ability to fund the contemplated settlement is **January 31, 2020**.
- 2) If Anderson demonstrates the ability to fund the settlement, the Trustee shall file a Bankruptcy Rule 9019 Motion by no later than **February 14, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 3) If Anderson cannot fund the settlement, the Trustee shall file a Motion for Default Judgment by no later than **February 14, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 4) A continued Status Conference shall be held on **March 10, 2020, at 10:00 a.m.** The Trustee shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event the matter is resolved, the continued Status Conference will go off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel

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CONT... Wardine Bridges

Chapter 7

Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wardine Bridges	Pro Se
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Defendant(s):

Mary Rosborough	Pro Se
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Plaintiff(s):

Jason M. Rund	Represented By Toan B Chung
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Trustee(s):

Jason M Rund (TR)	Represented By Toan B Chung
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Hearing Room 1568

10:00 AM

2:18-22393 Sharon R Williams

Chapter 7

Adv#: 2:19-01050 Miller v. Hancox

#5.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01050. Complaint by Elissa D. Miller against Donnell Hancox. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Simons, Larry)

fr. 5-14-19; 6-11-19; 10-15-19

Docket 1

Tentative Ruling:

12/6/2019

The Court has entered an order continuing this Status Conference to **March 10, 2020 at 10:00 a.m.** to enable the parties to attend mediation before Judge Donovan.

Party Information

Debtor(s):

Sharon R Williams

Pro Se

Defendant(s):

Donnell Hancox

Pro Se

Plaintiff(s):

Elissa D. Miller

Represented By
Larry D Simons

Trustee(s):

Elissa Miller (TR)

Represented By
Larry D Simons

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Hearing Room 1568

10:00 AM

2:19-13844 Mauro Enrique Castellon

Chapter 7

Adv#: 2:19-01204 Security First Bank v. Castellon

#6.00 Status Hearing
RE: [1] Adversary case 2:19-ap-01204. Complaint by THE DUNNING LAW FIRM APC SECURITY FIRST BANK against Mauro Enrique Castellon. false pretenses, false representation, actual fraud)) (MacLeod, James)

fr. 10-15-19

Docket 1

Tentative Ruling:

12/6/2019

Hearing VACATED. The Court has entered default judgment in Defendant's favor. Doc. No. 36.

Party Information

Debtor(s):

Mauro Enrique Castellon

Represented By
James Geoffrey Beirne

Defendant(s):

Mauro Enrique Castellon

Pro Se

Plaintiff(s):

Security First Bank

Represented By
James MacLeod

Trustee(s):

Elissa Miller (TR)

Pro Se

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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:19-16649 Christopher Todd Altpeter

Chapter 7

Adv#: 2:19-01296 United States Of America v. Altpeter

#7.00 Status HearingRE: [1] Adversary case 2:19-ap-01296. Complaint by United States Of America against Christopher Todd Altpeter. (Fee Not Required). Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Levey, Elan)

Docket 1

Tentative Ruling:

12/6/2019

On September 4, 2019, the Court issued a Scheduling Order [Doc. No. 3], which the Plaintiff served upon the Defendant on September 9, 2019. Doc. No. 8. The Scheduling Order provides in relevant part:

Any party contesting this Court's authority to enter a final order or judgment in this matter must file and serve a written objection no later than fourteen days prior to the date set for the first Status Conference. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). Failure to raise the issue in accordance with the requirements set forth above will be deemed consent to this court's authority to enter a final order or judgment.

Scheduling Order at ¶ 6.

In the Joint Status Report [Doc. No. 10] filed on November 22, 2019, Defendant checked the box indicating that it does not consent to entry of a final judgment by the Bankruptcy Court. However, Defendant did not file a written objection to the Bankruptcy Court's entry of final judgment, as required by the Scheduling Order. Therefore, Defendant is deemed to consent to the Bankruptcy Court's authority to enter a final judgment. In addition, the instant Complaint is a dischargeability action brought under § 523(a)(2)(A), and is consequently a core proceeding over which the Bankruptcy Court has statutory and constitutional authority to enter final judgment. Defendant's objection to the Bankruptcy Court's entry of final judgment is **OVERRULED.**

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY**

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CONT... Christopher Todd Altpeter

Chapter 7

ORDERS AS FOLLOWS:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **1/09/2020**.
 - b) The last day to disclose expert witnesses and expert witness reports is **4/28/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/28/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/16/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **6/23/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/27/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **07/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties

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Christopher Todd Altpeter

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- must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
- ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **07/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
 - 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

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CONT... Christopher Todd Altpeter

Chapter 7

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christopher Todd Altpeter

Represented By
Harriet L. Goldfarb

Defendant(s):

Christopher Todd Altpeter

Pro Se

Plaintiff(s):

United States Of America

Represented By
Elan S Levey

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:19-16657 Ronald K. Perry

Chapter 7

Adv#: 2:19-01335 Huang v. Perry

#8.00 Status Hearing RE: [1] Adversary case 2:19-ap-01335. Complaint by Sander Huang against Ronald K. Perry. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(14 (Recovery of money/property - other)) (Madala, Naveen)

Docket 1

Tentative Ruling:

12/6/2019

The Clerk of the Court entered Defendant's default on November 12, 2019. Doc. No. 16. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 31, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **March 10, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Ronald K. Perry

Chapter 7

Party Information

Debtor(s):

Ronald K. Perry

Represented By
Steven B Lever

Defendant(s):

Ronald K. Perry

Pro Se

Plaintiff(s):

Sander Huang

Represented By
Naveen Madala

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:19-17051 Marlon Camar Salamat

Chapter 7

Adv#: 2:19-01411 Fernando v. Salamat et al

#9.00 Status Hearing RE: [1] Adversary case 2:19-ap-01411. Complaint by Angela Sandra Legaspi Fernando against Marlon Camar Salamat, Daisy Anne Boiser Salamat. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(91 (Declaratory judgment)) (Smyth, Stephen)

Docket 1

Tentative Ruling:

12/6/2019

Defendants uploaded the incorrect PDF file when filing the Answer to the Complaint on CM/ECF. By no later than **December 12, 2019**, Defendants shall refile their Answer.

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) To accommodate Defendant's counsel's scheduling conflict with respect to the July trial date, the litigation dates previously ordered are extended, as follows:
 - a) The last day to amend pleadings and/or join other parties is **3/12/2020**.
 - b) The last day to disclose expert witnesses and expert witness reports is **6/30/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/30/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/18/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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CONT...

Marlon Camar Salamat

Chapter 7

- e) The last day for dispositive motions to be heard is **8/25/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/29/2020**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **09/15/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

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CONT...

Marlon Camar Salamat

Chapter 7

may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

i) Trial is set for the week of **09/28/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Marlon Camar Salamat

Represented By
Michelle A Marchisotto

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CONT... Marlon Camar Salamat

Chapter 7

Defendant(s):

Marlon Camar Salamat Pro Se

Daisy Anne Boiser Salamat Pro Se

Joint Debtor(s):

Daisy Anne Boiser Salamat Represented By
Michelle A Marchisotto

Plaintiff(s):

Angela Sandra Legaspi Fernando Represented By
Stephen S Smyth

Trustee(s):

Timothy Yoo (TR) Pro Se

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Hearing Room 1568

10:00 AM

2:19-17051 Marlon Camar Salamat

Chapter 7

Adv#: 2:19-01416 Linsangan v. Salamat et al

#10.00 Status Hearing RE: [1] Adversary case 2:19-ap-01416. Complaint by Maria Linsangan against Marlon Camar Salamat, Daisy Anne Boiser Salamat. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rodriguez, Sergio)

Docket 1

Tentative Ruling:

12/6/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) To accommodate Defendant's counsel's scheduling conflict with respect to the July trial date, the litigation dates previously ordered are extended, as follows:
 - a) The last day to amend pleadings and/or join other parties is **3/12/2020**.
 - b) The last day to disclose expert witnesses and expert witness reports is **6/30/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/30/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/18/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **8/25/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

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Central District of California
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10:00 AM

CONT...

Marlon Camar Salamat

Chapter 7

- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/29/2020**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)
- g) A Pretrial Conference is set for **09/15/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

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CONT...

Marlon Camar Salamat

Chapter 7

- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- i) Trial is set for the week of **09/28/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Marlon Camar Salamat

Represented By

Michelle A Marchisotto

Defendant(s):

Daisy Salamat

Pro Se

DOES 1-10, Inclusive

Pro Se

**United States Bankruptcy Court
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CONT... Marlon Camar Salamat

Chapter 7

Marlon Salamat

Pro Se

Joint Debtor(s):

Daisy Anne Boiser Salamat

Represented By
Michelle A Marchisotto

Plaintiff(s):

Maria Linsangan

Represented By
Sergio A Rodriguez

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:19-17235 Ruben Lino Zuniga

Chapter 7

Adv#: 2:19-01415 Nesse et al v. Zuniga

#11.00 Status Hearing RE: [1] Adversary case 2:19-ap-01415. Complaint by Brian Nesse, Darrell Klotzbach, Chan Klotzbach against Ruben Lino Zuniga. false pretenses, false representation, actual fraud)) (Nichani, Vinod)

Docket 1

Tentative Ruling:

12/6/2019

Having reviewed the Joint Status Report filed by the parties, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **1/09/2020**.
 - b) The last day to disclose expert witnesses and expert witness reports is **4/28/2020**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/28/2020**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/16/2020**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **6/23/2020**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/27/2020**. (If the non-expert discovery

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CONT...

Ruben Lino Zuniga

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **07/14/2020 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii), and

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Ruben Lino Zuniga

Chapter 7

shall be filed by the deadline specified in ¶(1)(h)(ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- i) Trial is set for the week of **07/27/2020**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ruben Lino Zuniga

Represented By
Raymond J Bulaon

Defendant(s):

Ruben Lino Zuniga

Pro Se

Plaintiff(s):

Brian Nesse

Represented By
Vinod Nichani

**United States Bankruptcy Court
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CONT... Ruben Lino Zuniga

Chapter 7

Darrell Klotzbach

Represented By
Vinod Nichani

Chan Klotzbach

Represented By
Vinod Nichani

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#12.00 Status Hearing
RE: [1] Postconfirmation Status Conference

fr. 10-17-18; 1-15-19; 6-11-19

Docket 1

Tentative Ruling:

12/6/2019

On June 18, 2018, the Court entered an order confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* (the "Plan"). The Plan appointed Bradley D. Sharp as the Plan Administrator responsible for liquidating the assets of the estate. (The Plan provided that all assets of the estate remained vested in the estate. *See* Plan at Art. 3.)

The Plan Administrator has made six distributions to holders of allowed claims. Funds distributed to date exceed \$9.6 million.

Having reviewed the *Fourth Post-Confirmation Status Report*, the Court finds that the Plan Administrator is making sufficient progress toward effectuating the Plan. A continued Status Conference shall take place on **May 12, 2020, at 10:00 a.m.** The Plan Administrator shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#13.00 Status conference re status of appeal

fr. 7-9-19; 10-15-19

Docket 129

Tentative Ruling:

12/6/2019

Trial in this adversary proceeding was initially set for May 29–30, 2018. On May 28, 2018, Defendant Tsai Luan Ho a/k/a Shelby Ho ("Ho") (the only remaining defendant) filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Northern District of California (the "Northern District Bankruptcy Court"). The Court took the trial off calendar. Based upon Plaintiff's representation that it intended to pursue a non-dischargeability action against Ho in the Northern District Bankruptcy Court, the Court subsequently dismissed this action without prejudice.

On July 20, 2018, Plaintiff filed a non-dischargeability action against Ho in the Northern District Bankruptcy Court (the "523 Action"). On August 23, 2018, the Chapter 7 Trustee in Ho's bankruptcy case filed a § 727 complaint to deny Ho's discharge (the "727 Action"). On April 9, 2019, the Northern District Bankruptcy Court entered judgment denying Ho's discharge, pursuant to § 727(a)(3) (the "Judgment Denying Discharge"). On April 16, 2019, Ho appealed the Judgment Denying Discharge to the United States District Court for the Northern District of California (the "District Court"). On June 7, 2019, the Northern District Bankruptcy Court denied Ho's motion for a stay pending appeal of the Judgment Denying Discharge. Ho's appeal of the Judgment Denying Discharge remains pending before the District Court. Proceedings in the 523 Action have been stayed pending resolution of the appeal of the Judgment Denying Discharge. On April 26, 2019, the Northern District Bankruptcy Court issued a minute order providing that the 523 Action "may be restored to the calendar after the District Court acts on the pending appeal" of the Judgment Denying Discharge.

On July 9, 2019, the Court conducted a hearing on Plaintiff's motion to reopen this adversary proceeding (the "Motion to Reopen"). Plaintiff sought an order

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CONT... Liberty Asset Management Corporation

Chapter 11

reopening this proceeding and setting the matter for an immediate status conference in trial.

The Court ruled that it would not set this matter for trial until the District Court had decided Ho's appeal of the Judgment Denying Discharge. The Court reasoned:

In the event that the District Court overturns the Judgment Denying Discharge, Plaintiff will be required to pursue the 523 Action to obtain a recovery against Ho. The 523 Action is based upon the same nucleus of operative facts as this action. The potential for duplicative litigation weighs against proceeding to trial at this time. In addition to wasting judicial resources, the additional costs resulting from a duplicative trial would decrease the recoveries available for distribution to creditors by the Plan Administrator.

Ruling on Motion to Reopen [Doc. No. 135] at 4.

The Court set this Status Conference to monitor the status of Ho's appeal of the Judgment Denying Discharge. The appeal remains pending before the District Court (briefing was completed on October 9, 2019).

A continued Status Conference to monitor the appeal shall be held on **February 11, 2020, at 10:00 a.m.** A Status Report shall be submitted by no later than seven days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz

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CONT... Liberty Asset Management Corporation

Chapter 11

Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By
James Andrew Hinds Jr
Paul R Shankman
Rachel M Sposato

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

Bradley D. Sharp

Represented By
Gail S Greenwood

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#14.00 Status Hearing RE: [30] Amended Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association by Alexandra Achamallah on behalf of Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against all defendants. (RE: related document(s)1 Adversary case 2:19-ap-01165. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) filed by Plaintiff Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.). (Attachments: # 1 Redline of Initial Complaint and First Amended Complaint) (Achamallah, Alexandra)

Docket 30

Tentative Ruling:

12/6/2019

The Court has entered an order continuing this Status Conference to **December 19, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on the Motion to Dismiss.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Defendant(s):

U.S. Bank National Association

Represented By
Jason D Strabo
Clark Whitmore
Jason M Reed
Megan Preusker
Nathan F Coco
Mark Shinderman

Plaintiff(s):

Official Committee of Unsecured

Represented By
Mark Shinderman
James Cornell Behrens
Alexandra Achamallah

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#15.00 Status Hearing RE: [28] Amended Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association by Alexandra Achamallah on behalf of Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against all defendants. (RE: related document(s)1 Adversary case 2:19-ap-01166. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association. priority or extent of lien or other interest in property)),(91 (Declaratory judgment)) filed by Plaintiff Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.). (Attachments: # 1 Redline of Initial Complaint and First Amended Complaint) (Achamallah, Alexandra)

Docket 28

Tentative Ruling:

12/6/2019

The Court has entered an order continuing this Status Conference to **December 19, 2019, at 10:00 a.m.**, to take place concurrently with the hearing on the Motion to Dismiss.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Defendant(s):

UMB Bank, National Association

Represented By
Abigail V O'Brient

Plaintiff(s):

Official Committee of Unsecured

Represented By
Mark Shinderman
Alexandra Achamallah

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

2:18-20698 United International Mortgage Solutions, Inc. Chapter 11

Adv#: 2:19-01441 United International Mortgage Solutions, Inc. v. KAPLAN & SIMON, LLP,

#16.00 Status Hearing RE: [1] Adversary case 2:19-ap-01441. Complaint by United International Mortgage Solutions, Inc. against KAPLAN & SIMON, LLP, A Limited Liability Partnership. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment)) (Resnik, Matthew)

Docket 1

Tentative Ruling:

12/6/2019

The Clerk of the Court entered Defendant's default on November 15, 2019. Doc. No. 11. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **January 31, 2020**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **March 10, 2020, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Tuesday, December 10, 2019

Hearing Room 1568

10:00 AM

CONT... United International Mortgage Solutions, Inc. Chapter 11

Party Information

Debtor(s):

United International Mortgage	Represented By Matthew D. Resnik Roksana D. Moradi-Brovia
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Defendant(s):

KAPLAN & SIMON, LLP, A	Pro Se
All Persons Or Entities Unknown	Pro Se
DOES 1 to 10 Inclusive	Pro Se

Plaintiff(s):

United International Mortgage	Represented By Matthew D. Resnik
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**United States Bankruptcy Court
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Los Angeles
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Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:19-01061 Rosendo Gonzalez, Chapter 7 Trustee v. TCG Assets, Inc., a Colorado

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01061. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against TCG Assets, Inc., a Colorado corporation, TCG International Holdings, Inc., a Florida corporation, Michael B. Citron, an individual, Kenneth R. Morris, an individual, Law Office of Kenneth R. Morris LLC, a Colorado limited liability company, The Ulzheimer Group LLC, a Georgia limited liability, John Ulzheimer, an individual, Nicholas Moffat, an individual. (Charge To Estate). Complaint for 1. Avoidance of Transfers Pursuant to 11 U.S.C. § 544; 2. Avoidance of Avoidable Transfers Pursuant to 11 U.S.C. § 548; 3. Recovery on Account of Avoided Transfers Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Funds of Estate Pursuant to 11 U.S.C. § 542; and 5. Breach of Fiduciary Duty Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Melissinos, C)

Docket 1

***** VACATED *** REASON: CONTINUED 3-10-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

TCG Assets, Inc., a Colorado

Pro Se

TCG International Holdings, Inc., a

Pro Se

Michael B. Citron, an individual

Pro Se

Kenneth R. Morris, an individual

Pro Se

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11:00 AM

CONT... Green Jane Inc Chapter 7

Law Office of Kenneth R. Morris Pro Se

The Ulzheimer Group LLC, a Pro Se

John Ulzheimer, an individual Pro Se

Nicholas Moffat, an individual Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
C John M Melissinos

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-11795 Alana Gershfeld

Chapter 7

Adv#: 2:19-01052 Dye v. Khasin et al

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01052. Complaint by Carolyn A Dye against Maria Khasin, Larry A. Khasin, M & L Living Trust. (Charge To Estate).
Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. §§ 544 And 548; (2) To Recover Avoided Transfers Pursuant To 11 U.S.C. § 550; And,(3) Automatic Preservation Of Avoided Transfer Pursuant To 11 U.S.C. § 551
Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Gonzalez, Rosendo)

Docket 1

***** VACATED *** REASON: CONITNUED 1-14-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alana Gershfeld

Represented By
Alla Tenina

Defendant(s):

M & L Living Trust

Pro Se

Larry A. Khasin

Pro Se

Maria Khasin

Pro Se

Plaintiff(s):

Carolyn A Dye

Represented By
Rosendo Gonzalez

Trustee(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-21250 Thomas Ernesto Merino

Chapter 7

Adv#: 2:18-01460 Foreman v. Merino

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01460. Complaint by Star Rae Foreman against Thomas Ernesto Merino . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Del Mundo, Wilfredo) Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo). Additional attachment(s) added on 12/27/2018 (Del Mundo, Wilfredo).

Docket 1

***** VACATED *** REASON: CONTINUED 2-11-20 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Ernesto Merino

Represented By
Kourosh M Pourmorady

Defendant(s):

Thomas Ernesto Merino

Pro Se

Plaintiff(s):

Star Rae Foreman

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-21480 Rosa Huang Duong

Chapter 7

Adv#: 2:19-01048 Miller, Chapter 7 Trustee v. Mai et al

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01048. Complaint by Elissa D Miller, Chapter 7 Trustee against Mik H Mai, DLMRT Corporation Inc., a California corporation, Rosa Huang Duong, Pier Duong. (Charge To Estate). Complaint For (1) Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548, and 550, (2) Alter Ego, and (3) Conspiracy to Commit Fraudulent Transfer Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 9-24-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Huang Duong

Represented By
Barry E Borowitz

Defendant(s):

Pier Duong

Pro Se

Rosa Huang Duong

Pro Se

DLMRT Corporation Inc., a

Pro Se

Mik H Mai

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Steven Werth

Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... Rosa Huong Duong

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-22393 Sharon R Williams

Chapter 7

Adv#: 2:19-01050 Miller v. Hancox

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:19-ap-01050. Complaint by Elissa D. Miller against Donnell Hancox. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Simons, Larry)

Docket 1

***** VACATED *** REASON: Cont'd to 1/14/2020 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon R Williams

Pro Se

Defendant(s):

Donnell Hancox

Pro Se

Plaintiff(s):

Elissa D. Miller

Represented By
Larry D Simons

Trustee(s):

Elissa Miller (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-22630 Fabricio Mejia

Chapter 7

Adv#: 2:19-01024 Amy's Pastry. Inc. v. Mejia et al

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01024. Complaint by Amy's Pastry. Inc. against Fabricio Mejia, Ana Gloria Mejia. 2, & 3) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Bensamochan, Eric)

Docket 1

***** VACATED *** REASON: DISMISSED 8-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fabricio Mejia

Represented By
Jennifer Ann Aragon

Defendant(s):

Fabricio Mejia

Pro Se

Ana Gloria Mejia

Pro Se

Joint Debtor(s):

Ana Gloria Mejia

Represented By
Jennifer Ann Aragon

Plaintiff(s):

Amy's Pastry. Inc.

Represented By
Eric Bensamochan

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-23944 Yean Hee Kim

Chapter 7

Adv#: 2:19-01058 Jeong v. Kim et al

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01058. Complaint by Younkyung Jeong against Yean Hee Kim. false pretenses, false representation, actual fraud)),(65 (Dischargeability - other)),(65 (Dischargeability - other)),(65 (Dischargeability - other)) (Iwuchuku, Donald)

Docket 1

***** VACATED *** REASON: CONTINUED 1-14-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yean Hee Kim

Represented By
M Teri Lim

Defendant(s):

Yean Hee Kim

Pro Se

Yean Hee Kim

Pro Se

Plaintiff(s):

Younkyung Jeong

Represented By
Donald E Iwuchuku

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-24184 Robert Leslie Baillie Quigg

Chapter 7

Adv#: 2:19-01066 Hankey Capital LLC v. Quigg

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01066. Complaint by Hankey Capital LLC against Robert Leslie Baillie Quigg. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Mitnick, Eric)

Docket 1

***** VACATED *** REASON: DISMISSED 6-10-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Leslie Baillie Quigg

Represented By
David M Reeder

Defendant(s):

Robert Leslie Baillie Quigg

Pro Se

Plaintiff(s):

Hankey Capital LLC

Represented By
Eric A Mitnick

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-24265 Neilla M Cenci

Chapter 7

Adv#: 2:19-01065 BALL C M, Inc. v. Cenci et al

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01065. Complaint by BALL C M, Inc. against Neilla M Cenci. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Slates, Ronald)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 1-14-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neilla M Cenci

Represented By
James R Selth

Defendant(s):

Neilla M Cenci

Pro Se

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

BALL C M, Inc.

Represented By
Ronald P Slates

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:19-18933 Roderick R Chatman

Chapter 7

#109.00 Hearing
RE: [21] Motion to Dismiss Case for Abuse and Notice of Motion (BNC)
Pursuant to 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to
Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's
Discharge; Memorandum of Points and Authorities and Declaration of Wendy
Carole Sadovnick in Support Thereof . (Mar, Alvin)

Docket 21

***** VACATED *** REASON: CONTINUED 1-14-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roderick R Chatman

Represented By
Angela R Swan

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:19-ap-01042. Complaint by VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Notice of Required Compliance with Local Bankruptcy Rule 7026-1) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(71 (Injunctive relief - reinstatement of stay)) (Kahn, Steven)

Docket 1

*** VACATED *** REASON: AMENDED COMPLAINT FILED 3-11-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER

Pro Se

Plaintiff(s):

ST. FRANCIS MEDICAL

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Steven J Kahn

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

VERITY HEALTH SYSTEM OF

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#111.00 Pre-Trial Conference
RE: [13] Amended Complaint /First Amended Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay and Injunctive Relief by Steven J Kahn on behalf of ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (RE: related document(s)1 Adversary case 2:19-ap-01042. Complaint by VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Notice of Required Compliance with Local Bankruptcy Rule 7026-1) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(71 (Injunctive relief - reinstatement of stay)) filed by Plaintiff ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, Plaintiff VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, Plaintiff ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation). (Kahn, Steven)

Docket 13

***** VACATED *** REASON: CONTINUED 2-11-20 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER

Pro Se

Plaintiff(s):

VERITY HEALTH SYSTEM OF

Represented By
Steven J Kahn

ST. VINCENT MEDICAL

Represented By
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#112.00 Pre-Trial Conference

RE: [1] Adversary case 2:19-ap-01165. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association. priority or extent of lien or other interest in property), (91 (Declaratory judgment)) (Shinderman, Mark)

fr: 4-14-20

Docket 1

***** VACATED *** REASON: STATUS HEARING RE AMENDED
COMPLAINT TO BE HEARD TODAY.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#113.00 Pre-Trial Conference

RE: [1] Adversary case 2:19-ap-01166. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association. priority or extent of lien or other interest in property), (91 (Declaratory judgment)) (Shinderman, Mark)

fr: 4-14-20

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 12-10-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:19-21828 Marta A Turcios Guevara

Chapter 7

#114.00 Hearing

RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2905 La Puesta Del Sol, Palm Springs, CA 92262 . (Khil, Christina)
fr. 12-9-19

Docket 12

Tentative Ruling:

12/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The Debtor filed this voluntary Chapter 7 case on October 7, 2019. On August 1, 2007, Wayne J. Rizzi (the "Borrower") executed a security instrument secured by real property located at 2905 La Puesta Del Sol, Palm Springs, CA 92262 (the "Property"). *See* Motion, Ex. 1. As set forth on Exhibit 6 of the Motion, the Borrower purportedly granted the Debtor an interest in the Property in the amount of \$7,500 through a short form deed of trust. The deed of trust is dated August 16, 2019, fifty-one days before this case was filed. *See* Motion, Ex. 6. Nevertheless, Debtor's commencement documents do not reflect that she possesses any interests in real property. Doc. No. 1. In fact, the record indicates that Debtor has no contractual obligations, or is otherwise in privity of contract, with either the Borrower or the Movant. Movant also claims that since 2016 there have been at least two other bankruptcy petitions affecting interests in the Property. Based on the foregoing, the Court determines that in rem relief under § 362(d)(4) is suitable.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... **Marta A Turcios Guevara**

Chapter 7

Notwithstanding, the Court cannot conclude that Debtor herself has actually engaged in any bad faith conduct, or that the instant case is part of a scheme to delay, hinder, and defraud creditors. *See In re Dorsey*, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012) (" [section] 362(d)(4) 'does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all.'") (internal citations omitted).

For the reasons set forth above, the Motion is GRANTED to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable law. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marta A Turcios Guevara

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... Marta A Turcios Guevara

Chapter 7

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:19-20444 Cafa Homes Inc.

Chapter 7

#115.00 Hearing

RE: [40] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2825 and 2825 1/2 Live Oak Street, Huntington Park, CA 90255 . (Rubanowitz, Shalom)

fr. 11-25-19, 12-9-19

Docket 40

Tentative Ruling:

12/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (B.A.P. 9th Cir. 1981).

The subject property has a value of \$606,900 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. *See* Motion, Ex. 3 [Debtor's

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... Cafa Homes Inc.

Chapter 7

schedules]. The liens against the property and the expected costs of sale total \$790,621.24. *See* Motion at 8-9; *see also* Supplemental Declaration of Christopher Powell, ¶¶ 4-6 [Doc. No. 70]. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors. Based on the foregoing, relief from stay is also appropriate under § 362(d) (1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cafa Homes Inc.

Represented By
John M Boyko

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:19-22902 Gregory Roman Formano

Chapter 7

#116.00 Hearing

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: 1HGC R3F8 1EA0 06698 .
fr. 12-9-19

Docket 9

Tentative Ruling:

12/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant. *See* Doc. No. 1.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... **Gregory Roman Formano**
system within 7 days of the hearing.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Gregory Roman Formano

Represented By
Daniel King

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

2:19-20407 Richard Sang Kim

Chapter 7

#117.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 924 S. Carondelet Street # 219, Los Angeles, CA 90006 with Exhibit A through E and Proof of Service of Document.
fr. 12-9-19

Docket 13

Tentative Ruling:

12/6/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant served a notice to quit upon the property's master tenant and all other occupants on August 1, 2019, and an unlawful detainer action was filed on August 22, 2019, with a continued trial date of December 9, 2019. The Debtor commenced this voluntary chapter 7 petition on September 3, 2019. In addition, the Debtor filed an answer to the unlawful detainer action on September 26, 2019. *See* Motion, Ex. E.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 10, 2019

Hearing Room 1568

11:00 AM

CONT... **Richard Sang Kim**

Chapter 7

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Richard Sang Kim

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01405 Capitol Distribution Company, LLC v. Bonert et al

#1.00 Hearing
RE: [17] Motion for Remand with proof of service (Blakeley, Scott)

FR. 11-19-19

Docket 17

Tentative Ruling:

12/10/2019

These Motions to Remand cannot be adjudicated until it is known whether Plaintiffs will file proofs of claim against the estate. The claims bar date is December 20, 2019. The Court has entered orders continuing these hearings to **January 8, 2020, at 10:00 a.m.** Absent further order of the Court, no additional briefing on the Motions to Remand will be accepted.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Inc., a California

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert
Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Chapter 11

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

DOES 1 through 10, inclusive

Pro Se

Beefam, LLC

Represented By
Lawrence M Jacobson

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Capitol Distribution Company, LLC

Represented By
Sean Lowe
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01405 Capitol Distribution Company, LLC v. Bonert et al

#2.00 Status Hearing

RE: [9] Amended Complaint with proof of service by Scott E Blakeley on behalf of Capitol Distribution Company, LLC against 3144 Bonert's LLC, Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's Inc., a California corporation, Bonert's Jadasaha, LLC, Bonert's MV, LLC, Bonert's Mibon, LLC, DOES 1 through 10, inclusive. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Statement of Account) (Blakeley, Scott)

FR, 11-12-19

Docket 9

Tentative Ruling:

12/10/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Inc., a California

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

	Lawrence M Jacobson
Bonert's MV, LLC	Represented By Lawrence M Jacobson
Bonert's Mibon, LLC	Represented By Lawrence M Jacobson
3144 Bonert's LLC	Represented By Lawrence M Jacobson
DOES 1 through 10, inclusive	Pro Se
Beefam, LLC	Represented By Lawrence M Jacobson

Joint Debtor(s):

Vivien Bonert	Represented By Alan W Forsley
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Plaintiff(s):

Capitol Distribution Company, LLC	Represented By Sean Lowe Scott E Blakeley
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01406 Stratas Foods LLC v. Bonert et al

#3.00 Hearing

RE: [17] Motion for Remand with proof of service (Blakeley, Scott)

Docket 17

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Tentative Ruling:

12/10/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert

Chapter 11

Beefam, LLC

Lawrence M Jacobson

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Stratas Foods LLC

Represented By
Sean Lowe
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-20836 Michael Bonert

Chapter 11

Adv#: 2:19-01406 Stratas Foods LLC v. Bonert et al

#4.00 Status Hearing

RE: [9] Amended Complaint with proof of service by Scott E Blakeley on behalf of Stratas Foods LLC against 3144 Bonert's LLC, Beefam, LLC, Michael Bonert, Vivien Bonert, Bonert Management Company, Inc., Bonert's Incorporated dba Bonert's Slice of Pie, Bonert's Jadasaha, LLC, Bonert's MV, LLC, Bonert's Mibon, LLC, DOES 1 through 10, inclusive. (Attachments: # 1 Exhibit 1 - Invoices # 2 Exhibit 2 - Statement of Account) (Blakeley, Scott)

FR. 11-12-19

Docket 9

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Tentative Ruling:

12/10/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Defendant(s):

Michael Bonert

Represented By
Alan W Forsley

Vivien Bonert

Represented By
Alan W Forsley

Bonert's Incorporated dba Bonert's

Pro Se

Bonert Management Company, Inc.

Represented By
Lawrence M Jacobson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Michael Bonert
Bonert's Jadasaha, LLC

Represented By
Lawrence M Jacobson

Chapter 11

Bonert's MV, LLC

Represented By
Lawrence M Jacobson

Bonert's Mibon, LLC

Represented By
Lawrence M Jacobson

Beefam, LLC

Represented By
Lawrence M Jacobson

3144 Bonert's LLC

Represented By
Lawrence M Jacobson

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

Plaintiff(s):

Stratas Foods LLC

Represented By
Sean Lowe
Scott E Blakeley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#5.00 HearingRE: [106] Application for Compensation Brief in Support of Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses on Behalf of Law Office of Lionel E. Giron for Debtor In Possession for Period of June 13, 2019 through November 15, 2019; (11 U.S.C. Secs. 327, 328, 330 And 331; F.R.B.P. P. 2016(A); Local Bankr.R 9013-1(O) and Loc. Bankr. R. 2016-1(B); Declaration of Lionel E. Giron In Support Thereof. for Lionel E Giron, Debtor's Attorney, Period: 6/13/2019 to 11/15/2019, Fee: \$8,565.00, Expenses: \$155.40.

Docket 106

Tentative Ruling:

12/10/2019

Having reviewed the second and final application for fees and expenses filed by this Applicant, the Court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis, if any, are now deemed final):

Fees: \$8,565 [Doc. No. 106]

Expenses: \$155.40 [*see id*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT...

Maria G Gallarza-Dominguez

Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#6.00 Hearing
RE: [68] Motion to strike and Motion for Sanctions and Request to Strike
Defendants' Answers

Docket 68

***** VACATED *** REASON: CONTINUED 1-15-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Represented By
Raymond H. Aver

DOES 1-20, inclusive

Pro Se

Abraham Reihanian, as Trustee of

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-16493 Robert Arutyunyan

Chapter 7

Adv#: 2:19-01380 Janamian v. Arutyunyan et al

#7.00 Status Hearing

RE: [1] Adversary case 2:19-ap-01380. Complaint by Soroush Janamian against Robert Arutyunyan , Klaris Nazaryan . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(65 (Dischargeability - other))

fr. 11-12-19; 11-19-19

Docket 1

Tentative Ruling:

12/10/2019

See Cal. No. 7, below, incorporated in full by reference.

Party Information

Debtor(s):

Robert Arutyunyan

Represented By
Asbet A Issakhanian

Defendant(s):

Robert Arutyunyan

Pro Se

Klaris Nazaryan

Pro Se

Joint Debtor(s):

Klaris Nazaryan

Represented By
Asbet A Issakhanian

Plaintiff(s):

Soroush Janamian

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Robert Arutyunyan

Chapter 7

**United States Bankruptcy Court
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Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-16493 Robert Arutyunyan

Chapter 7

Adv#: 2:19-01380 Janamian v. Arutyunyan et al

#8.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding

fr: 11-19-19

Docket 9

Tentative Ruling:

12/10/2019

For the reasons set forth below, the Motion to Dismiss is GRANTED, and the Complaint is DISMISSED with prejudice.

Pleadings Filed and Reviewed:

- 1) Complaint for Damages and to Determine Dischargeability of Damages [Doc. No. 1] (the "Complaint")
- 2) Notice of Motion and Motion for Dismissal of Adversarial Proceedings Filed by Plaintiff Soroush Janamian Against Debtors Robert Arutyunyan and Klaris Nazaryan [Doc. No. 9] (the "Motion")
- 3) Plaintiff's Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss Adversarial Proceedings [Doc. No. 22]
 - a) Declaration of Alex Spada in Support of Plaintiff's Opposition to Debtors' Motion to Dismiss Adversarial Proceedings [Doc. No. 20]
 - b) Declaration of Soroush Hanamian in Opposition to Debtors' Motion to Dismiss Adversarial Proceedings [Doc. No. 19]
- 4) Defendants' Response to Opposition to Defendants Motion to Dismiss [Doc. No. 23]

I. Facts and Summary of Pleadings

Robert Arutyunyan and Klaris Nazaryan (the "Debtors") filed a voluntary Chapter 7 petition on June 3, 2019. Debtors scheduled Soroush Janamian as an unsecured creditor. On June 5, 2019, a *Notice of Chapter 7 Bankruptcy Case* (the "Notice") was

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Robert Arutyunyan

Chapter 7

mailed by the Bankruptcy Noticing Center to Janamian at the following address:

Soroush Janamian
c/o Bruce T. McIntosh
1055 E. Colorado Blve. Ste. 500
Pasadena, CA 91106-3271

Bankruptcy Noticing Center Certificate of Notice [Bankr. Doc. No. 15] at 1.

The Notice advised Janamian that the deadline to file a dischargeability complaint against the Debtors was September 9, 2019.

On September 13, 2019, Janamian filed a *Complaint for Damages and to Determine Dischargeability of Damages* [Adv. Doc. No. 1] (the "Complaint") against the Debtors.

The Debtors move to dismiss the Complaint as untimely. Plaintiff opposes the Motion to Dismiss. Plaintiff acknowledges that the Complaint was not filed timely, but argues that the Court should invoke its equitable power to excuse the untimely filing. In support of this request, Plaintiff submits the Declaration of Alex Spada, which provides in relevant part:

I worked on behalf of the Plaintiff ... with respect to the filing of the Adversary Proceeding Complaint in this Action.

On Friday, September 6, 2019, the Complaint was signed and I attempted to fax file the Summons and Complaint in this action. However, I was unsuccessful.

On Monday, September 9, 2019 ... I submitted the Summons and Complaint in this action to One Legal, a well known electronic filing service, for filing with the Court....

I heard nothing back from One Legal the next day, and I believed that it [the Complaint] had been accepted for filing.

On Wednesday, September 11, 2019, I called One Legal to confirm that the Complaint had been filed and was told, for the first time, that the paperwork was rejected because they needed "original paperwork."

The next day, on Thursday, September 12, 2018 [sic; should be 2019], I personally drove to the Bankruptcy Court and tried to file the Summons and Complaint in this action

At that time I was told that the court needed an "original wet signature."

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT...

Robert Arutyunyan

Chapter 7

On Friday, September 13, 2019, I obtained a new original wet signatures and took them to the court, and they were marked "Received."

Spada Decl. at ¶¶

II. Findings and Conclusions

Creditors who received notice of the petition are required to file a dischargeability complaint within sixty days after the first date set for the meeting of creditors. Bankruptcy Rule 4007(c). The deadline for filing a dischargeability complaint may be extended for cause, but only if a motion seeking an extension is filed before the deadline has expired. *Id.*

The Ninth Circuit has “repeatedly held that the sixty-day time limit for filing nondischargeability complaints under 11 U.S.C. § 523(c) is ‘strict’ and, without qualification, ‘cannot be extended unless a motion is made before the 60–day limit expires.’” *Anwar v. Johnson*, 720 F.3d 1183, 1187 (9th Cir. 2013) (citing *In re Kennerley*, 995 F.2d at 146). As explained by the *Anwar* court:

[B]y its terms, the rule requires creditors such as Anwar to file nondischargeability complaints within sixty days of the creditors’ meeting. A creditor may move to extend the deadline for cause—as Anwar successfully did once—but “[t]he motion shall be filed before the time has expired.” [Rule 4007(c).] Reinforcing the statement that creditors must move for extensions of FRBP 4007(c)’s filing deadline before the time for filing has expired, FRBP 9006(b)(3) states that bankruptcy courts may extend this deadline “only to the extent and under the conditions stated in” FRBP 4007(c) itself. Fed. R. Bankr.P. 9006(b)(3). This requirement distinguishes FRBP 4007(c)’s deadline from most others set by the bankruptcy rules, which bankruptcy courts may extend at any time upon a showing of good cause or excusable neglect.

Anwar, 720 F.3d at 1186–87.

In *Anwar*, the creditor missed the dischargeability deadline by approximately forty minutes as a result of technical problems with creditor’s counsel’s computer. *Id.* at 1185. In upholding the dismissal of the complaint as untimely, the court stated that “deadlines are often the terrible anvil on which a legal result is forged.” *Id.* at 1184. The court found that dismissal was required by the plain language of Bankruptcy Rule 4007(c) even though the complaint had been filed only approximately forty minutes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... **Robert Arutyunyan**

Chapter 7

late, and even though the debtor was not prejudice by the delay. *Id.* at 1188. The court held that “under the plain language of the rules and our controlling precedent,” there is not “an equitable exception from FRBP 4007(c)’s filing deadline.” *Id.*

Here, the issues preventing the timely filing of the Complaint are similar to the technical issues in *Anwar*. That is, the Complaint was not timely filed as a result of errors by the parties working on Plaintiff’s behalf, including the failure of Spada to file the Complaint by fax on September 6, 2019 and the failure of Spada to submit the required original paperwork on September 9, 2019. As was the case in *Anwar*, the “bankruptcy court lack[s] the equitable power to grant relief” from the untimely filing. *Id.* at 1187.

The Motion to Dismiss is GRANTED. This action is DISMISSED with prejudice. The Court will prepare and enter an order dismissing the action.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge’s Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Robert Arutyunyan

Represented By
Asbet A Issakhanian

Defendant(s):

Robert Arutyunyan

Pro Se

Klaris Nazaryan

Pro Se

Joint Debtor(s):

Klaris Nazaryan

Represented By
Asbet A Issakhanian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Robert Arutyunyan

Chapter 7

Plaintiff(s):

Soroush Janamian

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:19-13797 Liboria Zavalza

Chapter 11

#9.00 HearingRE: [87] Motion to Use Cash Collateral

Docket 87

Tentative Ruling:

12/10/2019

For the reasons set forth below, the Court GRANTS the Cash Collateral Motion. The Debtor is authorized to use the cash collateral through the date of plan confirmation or the dismissal of this case. The Debtor shall tender monthly adequate protection payments to the Bank as stated in the proposed budget.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 87] (the "Cash Collateral Motion")
2. Application for Payment of Interim Fees and/or Expenses for Lionel E. Giron [Doc. No. 82]
3. Order on Application for Payment of Interim Fees and/or Expenses [Doc. No. 92]
4. Order Approving Stipulation Re: Treatment of Creditor's Claim under Debtor's Chapter 11 Plan of Reorganization [Doc. No. 72]
5. Stipulation Re: Treatment of Creditor's Claim under Debtor's Chapter 11 Plan of Reorganization [Doc. No. 71]
6. Monthly Operating Report, October 2019 [Doc. No. 86]
7. Monthly Operating Report, September 2019 [Doc. No. 74]
8. Monthly Operating Report, August 2019 [Doc. No. 70]
9. Monthly Operating Report, July 2019 [Doc. No. 61]
10. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Liboria Zavalza (the "Debtor") filed this voluntary chapter 11 case on April 3, 2019 (the "Petition Date"). On Schedule A, the Debtor listed an ownership interest in a duplex located at 4053 & 4501(A) Raldolph [Note 1] Street, Huntington Park, CA 90255 (the "Property"). As stated in the Cash Collateral Motion, the Debtor rents out

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

CONT... Liboria Zavalza

Chapter 11

the Property and collects monthly rental income totaling \$4,000. The Property is subject to a first-priority deed of trust in favor of HSBC Bank, N.A., as Trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2007-3 (the "Bank") in the amount of \$1,185,616.25 [Note 2].

On October 16, 2019, the Court entered an order approving a stipulation executed between the Debtor and the Bank (the "Bank Stipulation") [see Doc. Nos. 71, 72]. The relevant terms of the Bank Stipulation are as follows:

1. The Bank shall have a fully secured claim in the amount of \$465,000 (the "Secured Claim").
2. The Secured Claim will be paid over 360 monthly installments of \$2,787.91, due on the first day of the month, commencing on the first day of the month following entry of an order approving the Bank's Stipulation [November 1, 2019].
3. In addition to the Secured Claim, the Debtor will also tender monthly escrow payments for real property taxes and insurance in the current amount of \$1,056.83, which is subject to change.
4. The unsecured portion of the Bank's claim in the amount of \$722,892.12 shall be treated as a general unsecured claim.

The Debtor seeks authorization to use cash collateral, through the date of confirmation of a chapter 11 plan, in accordance with both the Bank Stipulation and additional terms set forth in the Proposed Monthly Budget (the "Budget") appearing on page 5 of the Cash Collateral Motion. The Budget provides for the following expenses to be paid for with the Bank's cash collateral:

Income:	\$4,000.00
Expenses:	
The Bank	(\$2,787.91)
Property Taxes/ Insurance	(\$1,056.83)
Maintenance	(\$50.00)
Repairs & Supplies	(\$100.00)
Net Income:	\$5.26

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CONT... **Liboria Zavalza**

Chapter 11

Other Expenses: Single payment of \$15,000 for Attorney's Fees

The Debtor further attests that she holds a balance of \$17,767.51 in her rental account as of October 31, 2019. Declaration of Debtor in Support of Cash Collateral Motion (the "Zavalza Decl."), ¶ 10. The Debtor additionally expects to receive \$4,000 in rental income in November 2019, bringing the balance of her rental account to \$21,767.51. *Id.* In addition to the terms set forth in the Budget, the Debtor requests court authorization to pay allowed professional fees of \$15,000 from her rental account, which would leave the account with a balance of \$2,722.77 [Note 3]. *Id.* at ¶ 12. On December 6, 2019, the Court entered an order approving the application for interim fees and expenses for Lionel E. Giron, Debtor's counsel, in the amount of \$15,000 [Doc. No. 92].

Although the Debtor references certain lease agreements labeled as "Exhibit 1," the Debtor failed to include any attachments in support of the Cash Collateral Motion. As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987).

1. Expenses contemplated in the Bank Stipulation

The Court finds the terms of the Bank Stipulation, including the Debtor's acknowledgment of payments owed to the Bank on account of its secured claim, to be acceptable. To the extent that the Bank Stipulation contemplates expenses set forth in the Budget (including reasonable maintenance expenses), the Bank has affirmatively expressed consent over Debtor's use of its cash collateral. Even if maintenance expenses are not expressly provided for in the Bank Stipulation, maintaining the Property is necessary to adequately protect the Bank's interests. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that

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CONT...

Liboria Zavalza

Chapter 11

"[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [Secured Creditors'] interest in the [cash collateral]."). However, given that interim professional fees and costs are not discussed in the Bank Stipulation, the Court cannot determine that the Bank affirmatively expressed consent to authorize Debtor to pay her attorney with the Bank's cash collateral.

2. Interim professional fees and expenses

The Bank has not consented to the use of its cash collateral. Absent the Bank's consent, the Debtor must obtain court authorization for the use of cash collateral. § 363(c)(2)(B). In determining whether to authorize use of cash collateral, the Court notes that "[t]he principal restraint on use of cash proceeds is found in § 363(e), which specifies that the court shall condition the use of secured property 'as is necessary to provide adequate protection of such interest.' Therefore, when the Debtor proposes to use the Bank's cash collateral for professional fees without consent, the guiding inquiry is whether its security interests are 'adequately protected.'" *Security Leasing Partners v. ProAlert, LLC (In re ProAlert)*, 314 B.R. 436, 442 (9th Cir. B.A.P. 2004) (citing *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017 (11th Cir. 1984) (internal citations omitted)); *see also* § 363(e) (requiring the court to "prohibit or condition" the use of cash collateral "as is necessary to provide adequate protection of such interest"). For instance, the *In re ProAlert* court affirmed the decision to allow a debtor to use cash collateral to pay estate professionals over the objection of an adequately protected, but undersecured, creditor with an interest in the cash collateral. *See id.* at 445.

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments; (2)

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CONT... Liboria Zavalza

Chapter 11

an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Therefore, whether Debtor may use rental account monies to pay professional fees depends on Debtor's demonstrated ability to ensure adequate protection of the Bank's cash collateral.

Here, the Debtor offers to maintain the Property and make periodic adequate security payments referenced both in the Budget and the Bank Stipulation. *See* Cash Collateral Motion at 4. The Debtor further indicates that adequate security payments of \$3,844.74 will be paid out on a monthly basis from the rental income generated by the Property, which Debtor claims is \$4,000 per month. The Court acknowledges that the monthly amount of rental income purportedly generated from the Property is disputed [**Notes 4**]. However, based upon the Court's review of the most recent monthly operating report ("MOR") [*see* Doc. No. 86], the Court notes that the sum of \$3,888 was deposited into Debtor's rental account for the month of October 2019, a noticeable increase from receipts obtained for the months of August and July 2019 [*see* Doc Nos. 61, 70]. Similarly, Debtor received rental income totaling \$3,978 during the month of September 2019 [*see* Doc. No. 74]. Based on the foregoing, the Debtor will have sufficient funds to tender adequate protection payments to the Bank. To the extent that Debtor's projected cash flow remains constant, the Bank's interest will be adequately protected, even if Debtor uses rental account monies to pay allowed professional fees. Moreover, the Debtor's use of cash collateral to pay estate professionals is necessary to preserve the Property and to facilitate the Debtor's reorganization efforts.

In sum, the Court finds that the terms of the Cash Collateral Motion and the Budget comply with § 363. The Court finds that the Bank's interest in the Property remains adequately protected because there is no evidence in the record to suggest that the Property is declining in value and because the Debtor has shown her ability to effectuate monthly adequate protection payments to the Bank. In addition, the absence of any objections is deemed as consent to granting the Cash Collateral Motion pursuant to Local Bankruptcy Rule 9013-1(h).

III. Conclusion

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CONT... **Liboria Zavalza**

Chapter 11

For the reasons set forth above, the Court GRANTS the Cash Collateral Motion. The Debtor is authorized to use the cash collateral through the date of plan confirmation or the dismissal of this case. The Debtor shall make monthly adequate protection payments to the Bank as set forth in the Budget.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court believes this spelling is in error and that the correct street name is Randolph Street as set forth in the Cash Collateral Motion.

Note 2: On August 20, 2019, the Court entered an order granting the Debtor's motion to value the Property at \$465,000 and bifurcated the Bank's lien for plan purposes pursuant to § 506(a) [*see* Doc. No. 63].

Note 3: The Debtor's calculation is erroneous. Based on the figures set forth in the Budget and the Zavalza Declaration, the rental account would be left with a balance of \$2,772.77, not \$2,922.77.

Note 4: The U.S. Trustee's office filed an objection against Debtor's proposed disclosure statement because, among other reasons, Debtor's stated rental income is not supported by past MORs [*see* Doc. No. 85]. The Court reserves any findings with respect to Debtor's disclosure statement at this time.

Party Information

Debtor(s):

Liboria Zavalza

Represented By

**United States Bankruptcy Court
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CONT...

Liboria Zavalza

Lionel E Giron
Crystle Jane Lindsey
Joanne P Sanchez

Chapter 11

United States Bankruptcy Court
Central District of California
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Wednesday, December 11, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19;
11-20-19; 11-20-19; 12-4-19

Docket 2157

*** VACATED *** REASON: CONTINUED 12-18-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By
Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, December 12, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing

RE: [3009] Motion for approval of chapter 11 disclosure statement Notice of Hearing (With Court-Approved Dates) and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief; Memorandum of Points and Authorities In Support Thereof

Docket 3009

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 AM.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Rosa A Shirley

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, December 16, 2019

Hearing Room 1568

10:00 AM

2:19-20594 Edwin Javier Reyes and Maricela Elizabeth Reyes

Chapter 7

#1.00 Hearing

RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 38941 2nd St. E. Palmdale CA 93550 .

Docket 10

Tentative Ruling:

12/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtors, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). The stay is terminated as to the Debtors and the Debtors' bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the Debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

On September 19, 2019, the Movant served a notice to quit on the Debtors, and an unlawful detainer action was filed on September 26, 2019. Unbeknownst to the Movant, Debtors had initiated this chapter 7 petition on September 6, 2019. See Motion at 10.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtors' right to possess the premises must be determined. This does not

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CONT... Edwin Javier Reyes and Maricela Elizabeth Reyes Chapter 7

change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Edwin Javier Reyes	Pro Se
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Joint Debtor(s):

Maricela Elizabeth Reyes	Pro Se
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Trustee(s):

Carolyn A Dye (TR)	Pro Se
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**United States Bankruptcy Court
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Los Angeles
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Monday, December 16, 2019

Hearing Room 1568

10:00 AM

2:19-20961 Shin Ja Kim

Chapter 7

#2.00 HearingRE: [25] Notice of Motion and Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii) 2424 Fallen Drive, Rowland Heights Area, CA 91748 and Certificate of Service.

Docket 25

Tentative Ruling:

12/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Mary Garcia in support of Motion at 11E. Accordingly, on August 5, 2005, Myoung Suk Kim (the "Borrower") executed a promissory note in the original principal amount of \$600,000 (the "Note"), which is secured by real property located at 2424 Fallen Drive, Rowland Heights Area, CA 91748 (the "Property"). The original lender has since endorsed the Note in Movant's favor, and it is currently in Movant's possession. Motion, Ex. C. Further, the Borrower purportedly transferred interests in the Property to numerous third parties, including Debtor's "dba" businesses. The Movant claims that at least forty-three bankruptcy petitions have been filed by these various third parties, implicating interests in the Property. *See* Motion at 11E. Based on the foregoing, the Court determines that in rem relief under § 362(d)(4) is suitable. Notwithstanding, the Court

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CONT...

Shin Ja Kim

Chapter 7

cannot conclude that Debtor herself has actually engaged in any bad faith conduct, or that the instant case is part of a scheme to delay, hinder, and defraud creditors. *See In re Dorsey*, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012) ("[section] 362(d)(4) 'does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all.'" (internal citations omitted).

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. All other relief is denied. Lastly, the Court notes that Debtor's case was dismissed on November 25, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later

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CONT... **Shin Ja Kim**
than one hour before the hearing.

Chapter 7

Party Information

Debtor(s):

Shin Ja Kim	Pro Se
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Trustee(s):

Wesley H Avery (TR)	Pro Se
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Monday, December 16, 2019

Hearing Room 1568

10:00 AM

2:19-20961 Shin Ja Kim

Chapter 7

#3.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5242 Los Feliz Boulevard, Los Angeles, California 90027-1723 with proof of service. (Yabes, Gilbert)

Docket 21

Tentative Ruling:

12/11/2019

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$2,900,000 (Ex.10) and is encumbered by a perfected deed of trust or mortgage in favor of the Movant (Ex. 3). Considering Movant's lien and the estimated costs of sale, there is an equity cushion of \$45,176. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 1.6% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401

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CONT...

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Chapter 7

(9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

The Court further finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The Debtor filed this voluntary chapter 7 case on September 16, 2019, and this case was since dismissed on November 25, 2019. On June 21, 2006, Yi-Jung Lim (the "Borrower") executed a security instrument secured by real property located at 5242 Los Feliz Boulevard, Los Angeles, CA 90027 (the "Property"). Motion, Ex. 1. As indicated by the evidence presented by Movant, interests in the Property were purportedly transferred through unauthorized grant deeds to several individuals, including the Debtor. *See* Motion, Exs. 6-8. Accordingly, these third parties, including the Borrower, filed multiple bankruptcy cases affecting interests in the Property. *See* Exs. 4-7, 9. Based on the foregoing, the Court determines that in rem relief under § 362(d)(4) is suitable. Therefore, this petition was part of a scheme to delay, hinder, and defraud creditors, which involved the the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Notwithstanding, the Court cannot conclude that Debtor herself has actually engaged in any bad faith conduct. *See In re Dorsey*, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012) ("[section] 362(d)(4) 'does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all.'" (internal citations omitted)).

The Court notes that Debtor's case was dismissed on November 25, 2019. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

For the reasons set forth above, the Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable law. The 14-day period specified in Fed.R.Bankr.P.

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CONT...

Shin Ja Kim

Chapter 7

4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Shin Ja Kim

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 17, 2019

Hearing Room 1568

11:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Pre-Trial Conference

RE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

FR. 2-12-19; 6-11-19; 8-14-19; 10-15-19; 11-12-19

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE ON FIRST AMENDED COMPLAINT 1/14/20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Pro Se

BJ Mobile, Inc., a California

Pro Se

JETWORLD, Inc., a California

Pro Se

**United States Bankruptcy Court
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CONT... JW Wireless Inc. Chapter 7

JW Wireless OKC, an Oklahoma Pro Se

JWK Management, Inc., a California Pro Se

JETSTAR Auto Sports, Inc., a Pro Se

Shaigan Ben Her, an individual Pro Se

Lea Young Lee, an individual Pro Se

Joan Yu, an individual Pro Se

Chu Feng Yu, an individual Pro Se

Carolyn Rhyoo, an individual Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By
Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 17, 2019

Hearing Room 1568

11:00 AM

2:17-24296 Peter Truong

Chapter 7

#2.00 APPLICANT: WESLEY H. TRUSTEE, Trustee

Hearing re [65] & [66] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/16/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$24,500.00

Total Expenses: \$148.39

Bond Payment to International Sureties, Inc.: \$26.83

Tax Payment to Los Angeles County Tax Collector: \$2,820.33

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Peter Truong

Represented By
Ramon G Barredo

**United States Bankruptcy Court
Central District of California
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CONT... Peter Truong

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 17, 2019

Hearing Room 1568

11:00 AM

2:17-24296 Peter Truong

Chapter 7

#3.00 APPLICANT: ROQUEMORE, PRINGLE & MOORE, Attorney

Hearing re [65] & [66] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/16/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$12,600.00

Expenses: \$869.39

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Peter Truong

Represented By
Ramon G Barredo

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 17, 2019

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11:00 AM

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Chapter 7

#4.00 APPLICANT: Bond Payments - International Sureties

Hearing re [65] & [66] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/16/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Peter Truong

Represented By
Ramon G Barredo

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 17, 2019

Hearing Room 1568

11:00 AM

2:17-24296 Peter Truong

Chapter 7

**#5.00 APPLICANT: Other State or Local Taxes (post-petition) - Los Angeles County
Tax Collector**

Hearing re [65] & [66] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/16/2019

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Peter Truong

Represented By
Ramon G Barredo

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
Central District of California
Los Angeles
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11:00 AM

2:17-24296 Peter Truong

Chapter 7

#6.00 APPLICANT: MENCHACA & COMPANY, Accountant

Hearing re [65] & [66] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/16/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$2,773.50

Expenses: \$25.35

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Peter Truong

Represented By
Ramon G Barredo

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#1.00 Hearing
RE: [112] Motion for Certification to Court of Appeals Notice of Motion and Motion to Certify for Interlocutory Appeal The Denial In Part Of Plaintiffs Motion For Leave To Amend; Declaration Of Thomas J. Eastmond In Support Thereof with proof of service

fr. 10-3-19

Docket 112

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON
12-11-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon

Represented By
Lawrence J Hilton
Mark S Cander

BJ Mobile, Inc., a California

Represented By
Kelvin J Lo

JETWORLD, Inc., a California

Represented By
Gary M Jackson

JW Wireless OKC, an Oklahoma

Represented By
Kelvin J Lo

JWK Management, Inc., a California

Represented By
Michael H Yi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:18-19147 Maria L Rodriguez

Chapter 7

#2.00 APPLICANT: Trustee - PETER J MASTAN

Hearing re [32] & [33] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$566.84 requested [*see* Doc. No. 33]

Total Expenses: \$22.00 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria L Rodriguez

Represented By
Ameet Gandhi

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:19-23646 Western Star, LLC

Chapter 7

#3.00 Show Cause Hearing re [5] Show Cause Why This Case Should Not Be Dismissed Based Upon Debtor's Lack Of Representation By Counsel.

Docket 0

Tentative Ruling:

12/17/2019

Debtor has failed to respond to the Court's Order to Show Cause. For the reasons set forth below, Debtor's Chapter 7 petition is DISMISSED.

Pleadings Filed and Reviewed:

- 1) Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Based Upon Debtor's Lack of Representation by Counsel (the "Order to Show Cause") [Doc. No. 5]
 - a) Bankruptcy Notice Center Certificate of Notice [Doc. Nos. 9-10]
- 2) No response to the Order to Show Cause is on file

Western Star, LLC (the "Debtor") filed a voluntary Chapter 7 petition on November 20, 2019. The Debtor is not represented by counsel. On November 21, 2019, the Court entered an *Order Requiring Debtor to Appear and Show Cause Why this Case Should Not be Dismissed Based Upon Debtor's Lack of Representation by Counsel* (the "Order to Show Cause") [Doc. No. 5]. Debtor has not responded to the Order to Show Cause and has not retained counsel.

"[A] corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). This requirement is reiterated in Local Bankruptcy Rule ("LBR") 9011-2(a).

Debtor's Chapter 7 petition is DISMISSED. The Court will prepare and enter an order of dismissal.

Party Information

**United States Bankruptcy Court
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CONT... Western Star, LLC

Chapter 7

Debtor(s):

Western Star, LLC

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#4.00 Post Confirmation Status Conference

fr. 4-10-19; 6-11-19; 7-9-19; 8-14-19

Docket 775

***** VACATED *** REASON: FINAL DECREE ENTERED 11-4-19**

Tentative Ruling:

8/13/2019

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 682] (the "Plan")
2. Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 728]
3. Notice of Hearing on Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 732]
4. Chapter 11 Ballots [Doc. No. 733]
5. Proof of Service of Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization; Second Amended Chapter 11 Plan of Reorganization; Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization; Ballot; Ballot Letter; Notice of Hearing on Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No.734]
6. Order Approving Stipulation re Continuance of Hearing on Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 740]
7. Order Granting United States' Ex Parte Application for a Stay of Briefing in Light of Lapse of Appropriations [Doc. No. 748] [Note 1]

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CONT... Monge Property Investments, Inc. Chapter 11

8. Order Approving Stipulation re Continuance of Deadlines Related to Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 754]
9. Order Approving Stipulation to Stay Confirmation Hearing on Debtor's Second Amended Chapter 11 Plan of Reorganization and Related Deadlines [Doc. No. 766]
10. Notice of Motion and Motion to Confirm Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 775] (the "Confirmation Brief")
11. Order (1) Modifying Briefing Schedule in Connection with Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization, and (2) Directing Debtor to Give Notice of Amended Dates [Doc. No. 777]
12. Proof of Service of: Order (1) Modifying Briefing Schedule in Connection with Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization, and (2) Directing Debtor to Give Notice of Amended Dates [Doc. No. 779]
13. Qualified Opposition of Valensi Rose, Plc, Holder of an Allowed Administrative Claim, to the Debtor-In-Possession's Motion for an Order Confirming Its Second Amended Chapter 11 Plan of Reorganization [Doc. No. 780] (the "Valensi Opposition")
14. Reply to the Opposition of Valensi Rose, PLC to Confirmation of Debtors' Second Amended Chapter 11 Plan of Reorganization [Doc. No. 783] ("Debtor's Reply")
15. Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator [Doc. No. 787]
16. Order Continuing Chapter 11 Plan Confirmation Hearing [Doc. No. 788]
17. Third Stipulation to Continue Hearing on Confirmation of Debtors' Second Amended Chapter 11 Plan [Doc. No. 799]
18. Order Approving Third Stipulation to Continue Hearing on Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 802]
19. Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims and Interests and Granting Certain Other Related Relief (5908 ½ Fayette Street, Los Angeles, CA 90042) [Doc. No. 806]
20. Status Report Re Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 822]
21. Status Report Re Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization [Doc. No. 826]

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Central District of California
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CONT... **Monge Property Investments, Inc.**

Chapter 11

I. Facts and Summary of Pleadings

Debtor-in-possession, Monge Property Investments, Inc. (the "Debtor"), filed this voluntary chapter 11 case on May 31, 2012 (the "Petition Date"). The Debtor now seeks confirmation of its *Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 682] (the "Plan").

Summary of the Plan

Class 1 – JPMorgan Chase Bank, N.A. – Claim Satisfied in Full

Class 1 consisted of the secured claim of JPMorgan Chase Bank, N.A. ("Chase") in the approximate amount of \$165,121.41, secured by a first-priority lien against 5908 Fayette Street, Los Angeles, CA 90042 (the "Fayette Property"). The Debtor sold the Fayette Property and paid Chase in full on March 14, 2019.

Class 2 – Los Angeles County Treasurer and Tax Collector – Claim Satisfied in Full

Class 2 consisted of the secured claim of the Los Angeles County Treasurer and Tax Collector (the "LACTTC") in the approximate amount of \$59,439.37. The Debtor used proceeds from the sale of the Fayette Property to pay LACTTC in full.

Class 3 – Priority Unsecured Claims – No Claims Exist

Class 3 is designated for holders of certain priority claims specified in §§ 507(a) (3), (4), (5), (6), and (7). The Debtor does not believe any such claims exist.

Class 4 – General Unsecured Claims – Accepts the Plan

Class 4 consists of general unsecured claims totaling \$78,711 that are not entitled to priority under § 507(a). Class 4 claimants will be paid in full in 60 equal monthly installments of \$1,312, commencing on the first day of the first month following the Effective Date. Class 4 is impaired and voted to accept the Plan.

Class 5 – Equity Interests – Unimpaired (Deemed to Accept)

Class 5 consists of the equity interests in the Debtor. The Plan provides for the sole equity holder to retain his interest in the Debtor. Class 5 is unimpaired and is therefore deemed to accept the Plan.

The Debtor also used the sale proceeds from the Fayette Property to pay the

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CONT... Monge Property Investments, Inc.

Chapter 11

following administrative and priority tax claims: (i) the United States of America, on behalf of the Internal Revenue Service, in the amount of \$210,762, in full satisfaction of Claims 13 and 14; (ii) the LACTTC, in the amount of \$96,104, in full satisfaction of Claims 7 and 12; (iii) the Los Angeles Housing & Community Investment, in the amount of \$37,248, in full satisfaction of Claim 9; (iv) Payne Financial Forensics, in the amount of \$7,205, pursuant to the Court's Order approving this applicant's fees (Doc. No. 699); (v) the Employment Development Department, in the amount of \$5,795.46, in full satisfaction of Claim 15; and (vi) the Franchise Tax Board, in the amount of \$11,502, in full satisfaction of Claim 10.

On June 21, 2019, the Court entered an order approving the Debtor's sale of real property located at 5908 ½ Fayette Street, Los Angeles, CA 90042 [Doc. No. 806]. The Debtor states that the sale closed on August 1, 2019 and the Debtor used the sale proceeds to pay Valensi Rose's administrative claim in full. Therefore, the only remaining administrative claim is the claim of Debtor's counsel, Resnik Hayes Moradi LLP ("RHM"), which the Debtor proposes to pay in full following Court approval.

As of the date of this tentative ruling, there are no pending oppositions to confirmation of the Plan.

II. Findings of Fact and Conclusions of Law

A. Preliminary issue

In support of Confirmation, the Debtor submitted the Declaration of Roksana D. Moradi-Brovia (the "Moradi-Brovia Decl."), [Doc. No. 775]. Ms. Moradi-Brovia states that she only received a single ballot in connection with confirmation of the Debtor's Plan and attached a copy of that ballot as Exhibit A. The single ballot was filed by Class 4 claimant Jesus Navarro and cast in favor of the Plan (the "Navarro Ballot"). However, the Navarro Ballot is dated March 15, 2019, despite the fact that the front page of the ballot unambiguously states: "If your ballot is not received by the proponent's attorney on or before 9/24/2018, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan." The Court has reviewed the record and has been unable to locate any order extending the voting deadline.

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CONT... Monge Property Investments, Inc.

Chapter 11

Neither the Debtor, nor any other interested party, has raised this issue. However, unless this Court deems the Navarro Ballot timely, the Debtor will have failed to have obtained acceptance of an impaired consenting class and the Court must deny confirmation of the Debtor's Plan.

Bankruptcy Rule 3017(c) states that "[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims or interests may accept or reject the plan" Fed. R. Bankr. P. 3017(c). "Once the date for filing an acceptance or rejection of the plan has been fixed, a creditor must accept or reject the plan within this time limit, or move the court to permit [the] late filing where failure to file timely was the result of excusable neglect." *In re Ekstrom*, 2010 Bankr. LEXIS 982, at *44-45 (Bankr. D. Ariz. Mar. 23, 2010) (citing *In re Paul*, 101 B.R. 228 (Bankr. S.D. Cal. 1989)). In determining whether excusable neglect exists, courts consider a broad range of factors including: (1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the creditor acted in good faith; and (5) whether clients should be penalized for their counsel's mistake or neglect. *In re Paul*, 101 B.R. at 230-31 (citing *In re Dix*, 95 B.R. 134, 138 (B.A.P. 9th Cir. 1988)).

In this case, the voting deadline was set for September 24, 2018 and there has been no formal request to allow the late-filed Navarro Ballot. However, since it appears that the only remaining class of claimants is Class 4 general unsecured creditors and the Debtor has proposed a 100% Plan, the Court finds that it is in the best interests of creditors and the Debtor to treat the Debtor's Confirmation Brief as a request to allow the Navarro Ballot.

Applying the *Dix* factors, the Court finds good cause exists to allow the Navarro Ballot. First, the Debtor will not be prejudiced if the Court were to deem the Navarro Ballot timely but would be prejudiced if the Court declines to do so. Additionally, because of unanticipated delays resulting from the Debtor's efforts to sell real property that was necessary to fund the Plan, the confirmation hearing has been continued several times. Therefore, even though the delay does not appear to have been beyond Mr. Navarro's control, such delay has not resulted in any detriment to the administration of this case. The Court also has no reason to find that Mr. Navarro

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CONT... **Monge Property Investments, Inc.**
acted in bad faith.

Chapter 11

Based upon the foregoing, the Court finds that sufficient excusable neglect exists to allow the late-filed Navarro Ballot to be counted.

B. The Plan Complies With All Applicable Provisions of 11 U.S.C. § 1129

As set forth below, the Court finds that the Plan complies will all applicable provisions of § 1129. The Plan is confirmed.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than

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CONT... Monge Property Investments, Inc. Chapter 11

claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

The Plan appropriately designates classes of claims and interests. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies which classes are impaired and which classes are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan."

The Plan specifies the treatment of impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by sale proceeds from the following sources:

- i. sale proceeds generated from the sale of the Debtor's interest in real property located at 5908 Fayette Street, Los Angeles, 90042 and 5908 ½ Fayette Street, Los Angeles, 90042

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CONT... Monge Property Investments, Inc.

Chapter 11

Angeles, CA 90042; [Note 2]

- ii. collection of rental income from real property located at 942-44 Marine Avenue, Wilmington, CA 90744; and
- iii. funds on hand in Debtor's Debtor-in-possession bank accounts.

The Debtor anticipates that all remaining allowed administrative claims will be paid by the Effective Date. The Debtor submitted evidence in support of its ability to adequately implement the Plan, in the form of income and expense projections, which are attached as Exhibit B to its Disclosure Statement. The proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Plan specifies that the Debtor's bylaws will be amended to include the requisite language set forth above. The Plan satisfies § 1123(a)(6).

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan does not contain any provision with respect to the selection of officers and directors. The Plan satisfies § 1123(a)(7).

10. Section 1123(a)(8)

Section 1123(a)(8), which imposes certain requirements upon individual debtors, is inapplicable in this case.

SECTION 1129(a)(2)

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Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Debtor has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Adequacy of Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates for Confirmation of Second Amended Chapter 11 Plan of Reorganization [Doc. No. 729]);
 - 2) Obtained Court approval of the employment of professional persons (*see* Doc. Nos. 89, 90, 230, 232, 286, 323, 335, 400, 416, 422, 640, 675); and
 - 3) Filed monthly operating reports.
- Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Debtor has complied with the requirements of the Code throughout this case. The Plan satisfies § 1129(a)(3).

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides that all professional fees are subject to review by the Court. The Plan satisfies § 1129(a)(4).

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Chapter 11

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses that the Debtor's post-confirmation management will remain the same as the Debtor's pre-confirmation management. The Plan satisfies § 1129(a)(5).

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1 and 2 have been paid in full. Class 3 was designated as priority unsecured claims, but the Debtor does not believe that any such claims exist. Therefore, the only remaining impaired class is Class 4, which consists of general unsecured creditors whose claims total approximately \$78,711. Class 4 has voted to accept the Plan. *See* Exhibit A to Moradi-Brovia Decl. [Doc. No. 775]. Accordingly, all classes have either accepted the Plan or have been paid in full. The Plan satisfies § 1129(a)(7).

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Chapter 11

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

Classes 1 and 2 have been paid in full. Class 3 was designated as priority unsecured claims, but the Debtor does not believe that any such claims exist. Class 4 is impaired and has voted to accept the Plan. *See* Exhibit A to Moradi-Brovia Decl. [Doc. No. 775]. All classes have either accepted the Plan or have been paid in full. The Plan satisfies § 1129(a)(8).

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all outstanding allowed administrative and priority claims in full on or before the Effective Date. The Plan proposes to pay administrative fees owing to its bankruptcy counsel, RHM, as soon as those fees are approved by the Court and RHM has agreed to this treatment. The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Class 4 consists of non-insider general unsecured claims, is impaired, and has voted to accept the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

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CONT... Monge Property Investments, Inc.

Chapter 11

The Debtor submits that it has sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon its review of the budget projections included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

Section 1129(a)(16) is inapplicable in this case.

SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, does not apply. All impaired classes have either been paid in full or have accepted the Plan.

SECTION 1129(c)

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CONT... Monge Property Investments, Inc.

Chapter 11

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

III. Conclusion

For the reasons set forth above, the Plan is CONFIRMED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Stipulation [Doc. No. 746] and Order state reference the hearing on the Debtor's Motion for Approval of Disclosure Statement, but this appears to be in error. The Stipulation and Order should have instead referenced continuance of the *Confirmation Hearing* and applicable briefing deadlines.

Note 2: The Debtor has already sold both properties and used the sale proceeds to satisfy a number of claims.

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CONT... Monge Property Investments, Inc.

Chapter 11

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19;
11-20-19; 11-20-19; 12-4-19; 12-11-19

Docket 2157

*** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By
Bruce Bennett

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
**AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1857

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

AppleCare Medical Group

Represented By
Latonia Williams
Susan I Montgomery

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 18, 2019

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 0

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1849

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Roche Diagnostics Corporation

Represented By

Paul J Laurin

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT...

Verity Health System of California, Inc.

David M Powlen
Kevin Collins

Chapter 11

**United States Bankruptcy Court
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Wednesday, December 18, 2019

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 2144

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

All Care Medical Group, Inc.

Represented By
Bryan L Ngo
Susan I Montgomery

AppleCare Medical Group St.

Represented By
Susan I Montgomery

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1882

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Quadramed Affinity Corporation and

Represented By

Schuyler Carroll

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT...

Verity Health System of California, Inc.

Amir Gamliel

Chapter 11

United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1930

*** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
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Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1949

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

St. Vincent IPA Medical Corporation

Represented By

Mark A Neubauer

John Ryan Yant

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT...

Verity Health System of California, Inc.

Donald R Kirk

Chapter 11

**United States Bankruptcy Court
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Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1965

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1954

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1850

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By

William M Rathbone

Jeffrey C Wisler

**United States Bankruptcy Court
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Los Angeles
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1940

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1866

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Kaiser Foundation Hospitals

Represented By

Christopher E Prince

**United States Bankruptcy Court
Central District of California
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Wednesday, December 18, 2019

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1890

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Abbott Laboratories Inc.

Represented By

Keith Patrick Banner

Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Samuel C Wisotzkey

Alere Informaties, Inc.

Represented By
Brian L Davidoff

**United States Bankruptcy Court
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1873

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Smith & Nephew, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Kevin M Eckhardt
Shannon E Daily
Robert A Rich

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**
fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

Docket 1863

***** VACATED *** REASON: CONTINUED 12-30-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

GE HFS, LLC

Represented By

John Mark Jennings

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Lisa M Peters

Lisa M Peters

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 18, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 HearingRE: [3667] Motion to Approve Compromise Under Rule 9019 /Debtors' Notice of Motion and Motion to Approve Compromise Among Verity Health System of California, Inc., St. Francis Medical Center, St. Vincent Medical Center and Local Initiative Health Authority for Los Angeles County D/B/A L.A. Care Health Plan

Docket 3667

Tentative Ruling:

12/17/2019

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Approve Compromise Among Verity Health System of California, Inc., St. Francis Medical Center, St. Vincent Medical Center and Local Initiative Health Authority for Los Angeles County dba LA Care Health Plan (the "Motion") [Doc. No. 3667]
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3665, 3666, 3667, 3674 and 3675 [Doc. No. 3761]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the "Hospitals").

On January 3, 2019, Debtors St. Vincent Medical Center ("St. Vincent") and St. Francis Medical Center ("St. Francis," and together with St. Vincent, the "Debtor Hospitals") filed a *Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief* (the "Complaint") [Doc. No. 1] against Local Initiative Health Authority for Los Angeles County, d/b/a L.A. Care Health Plan ("L.A. Care").

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

The Complaint alleges that L.A. Care failed to properly reimburse the Debtor Hospitals for services that they provided to members of L.A. Care's health plans. On April 15, 2019, the Court stayed adjudication of the Complaint pending arbitration.

VHS and the Debtor Hospitals move for approval of a settlement agreement with L.A. Care (the "Settlement Agreement"). The material terms of the Settlement Agreement are as follows:

- 1) L.A. Care shall pay the Debtor Hospitals \$8 million in full and complete satisfaction of those claims for reimbursement by L.A. Care under the terms of the Service Agreements for health services rendered by either of the Debtor Hospitals to any member of L.A. Care's health plans for dates of service on or before July 18, 2019 (the "Settled Claims"). The Settled Claims do not include (a) any claims for health services rendered by either of the Debtor Hospitals to any member of an L.A. Care health plan for health services with a date of service on or after July 19, 2019 (the "Open Claims"), which Open Claims shall be processed in the ordinary course of business according to the terms and conditions of the Service Agreements, and (b) any claims of VHS or the Debtor Hospitals arising under the Hospital Quality Assurance Fee Program (the "HQAf Claims").
- 2) The proof of claim filed by L.A. Care against St. Vincent shall be reduced from \$2,371,127.57 to \$991,481.62 and shall be allowed as a general unsecured claim, without further rights to setoff or recoupment.
- 3) The proof of claim filed by L.A. Care against St. Francis shall be reduced from \$7,704,774.88 to \$4,143,838.84 and shall be allowed as a general unsecured claim, without further rights to setoff or recoupment.

No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C*

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Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits and Complexity of the Litigation

These factors weigh in favor of approving the Settlement Agreement. The Settlement Agreement resolves a dispute pertaining to over 3,000 individual reimbursement claims. L.A. Care has asserted a number of defenses, including that a substantial number of the claims are time-barred; that the Debtor Hospitals failed to timely assert their administrative appeal rights under the terms of the Service Agreements; and that the Debtor Hospitals' calculation of reimbursable amounts is inaccurate. Litigation of these issues with respect to more than 3,000 reimbursement claims would be extremely time consuming and would require both percipient and expert witness testimony. The Settlement Agreement is far preferable to the expenses that would be incurred in continued litigation.

The possibility that additional litigation might yield a result nominally more favorable to the estates cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estates and creditors, because the additional administrative costs associated with the litigation would on net leave the estates worse off.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. Neither the Official Committee of Unsecured Creditors nor any other parties have objected to the Settlement Agreement.

Difficulties to be Encountered in the Matter of Collection

This factor weighs against approving the Settlement Agreement, as LA Care possesses sufficient assets to fund any judgment that would likely be entered against it. However, within the context of the Settlement Agreement, the Court finds that this

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factor is entitled to only minimal weight.

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III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED in its entirety. Movants shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Rosa A Shirley

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2:19-20836 Michael Bonert and Vivien Bonert

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#22.00 Hearing

RE: [70] Motion for Protective Order

Docket 70

Tentative Ruling:

12/17/2019

For the reasons set forth below, the Motion for Protective Order is GRANTED IN PART and DENIED IN PART.

Pleadings Filed and Reviewed:

- 1) Order on Ex Parte Motion for Order Pursuant to Rule 2004 Authorizing: (1) the Examination of Vivien Bonert and Michael Bonert; and (2) the Production of Documents (the "Rule 2004 Order") [Doc. No. 68]
- 2) Debtors' Motion for Reconsideration of the Court's Order on Creditors' Motion for an Order Under FRBP 2004 to Authorize: (1) Depositions of Debtors Michael and Vivien Bonert and (2) Production of Documents (the "Motion for Reconsideration") [Doc. No. 70]
- 3) Order (1) Deeming Motion for Reconsideration of Rule 2004 Order to Constitute a Motion for a Protective Order, (2) Scheduling a Hearing on the Motion for Protective Order for December 18, 2019, at 10:00 a.m., (3) Vacating Rule 2004 Order Pending Adjudication of the Motion for Protective Order, and (4) Extending Deadline to File Dischargeability Complaint Only as to Certain Creditors [Doc. No. 80]
 - a) Memorandum of Decision (1) Deeming Motion for Reconsideration of Rule 2004 Order to Constitute a Motion for a Protective Order, (2) Scheduling a Hearing on the Motion for Protective Order for December 18, 2019, at 10:00 a.m., (3) Vacating Rule 2004 Order Pending Adjudication of the Motion for Protective Order, and (4) Extending Deadline to File Dischargeability Complaint Only as to Certain Creditors [Doc. No. 78]
- 4) Discovery Stipulation Regarding Debtors' Motion for Protective Order (the "Discovery Stipulation") [Doc. No. 101]

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- a) Supplement to Discovery Stipulation Regarding Debtors' Motion for Protective Order (the "Supplement to Discovery Stipulation") [Doc. No. 104]

I. Facts and Summary of Pleadings

A. Background

Michael Bonert ("Michael") and Vivien Bonert ("Vivien," and together with Michael, the "Debtors") filed a voluntary Chapter 11 petition on September 12, 2019 (the "Petition Date"). Prior to the Petition Date, the Debtors operated a pie manufacturing company known as Bonert's Incorporated ("Bonerts"). In 2016, Bonerts ceased conducting business after its lender caused its assets to be sold through a federal receivership. Proceeds of the receivership sale were used to pay secured creditors, but were not sufficient to pay unsecured trade creditors, some of whom obtained unopposed judgments against Bonerts.

On August 13 and 14, 2019, Capitol Distribution Company, LLC ("Capitol"), Stratas Foods LLC ("Stratas"), Packaging Corporation of America, and Seneca Foods Corporation (collectively, the "Creditors") filed four collection actions (the "Collection Actions") against the Debtors, Bonerts, and LLCs wholly owned by the Debtors that were affiliates of Bonerts (the "Affiliates"). The Collection Actions allege, *inter alia*, that the Debtors operated the Affiliates and Bonerts as a single enterprise for the purpose of defeating the rights of creditors; that the Debtors misappropriated assets of Bonerts and the Affiliates; and that the Debtors are liable for trade debt incurred by Bonerts as its alter ego. Two of the Collection Actions were filed in the United States District Court for the Central District of California (the "District Court") and two of the Collection Actions were filed in the Los Angeles Superior Court (the "State Court").

Debtors sought bankruptcy protection for the purpose of having all alter-ego claims arising in connection with the Debtors' operation of Bonerts and the Affiliates adjudicated before the Bankruptcy Court. Pursuant to this objective, on September 13 and 16, 2019, the Debtors removed all four of the Collection Actions to the Bankruptcy Court.

On October 17, 2019, the Court approved stipulations remanding two of the Collection Actions to the District Court. Both stipulations were without prejudice to any party's right (1) to move for referral of the action back to the Bankruptcy Court or (2) to move for an injunction against the prosecution of the action. The Collection Actions that originated in the State Court remain pending before this Court. Hearings on the motions of Capitol and Stratas to remand the Collection Actions (the "Motions

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to Remand") are set for January 8, 2020. [Note 1]

On November 5, 2019, the Court granted Creditors' application for a Rule 2004 examination (the "Rule 2004 Motion") of the Debtors (the "Rule 2004 Order"). Doc. No. 68. On November 7, 2019, Debtors filed a motion for reconsideration of the Rule 2004 Order (the "Motion for Reconsideration"). Doc. No. 70. On November 8, 2019, the Court entered an Memorandum of Decision and accompanying order (1) deeming the Motion for Reconsideration to constitute a motion for a protective order (the "Motion for Protective Order"), (2) setting the instant hearing on the Motion for Protective Order, and (3) vacating the Rule 2004 Order pending adjudication of the Motion for Protective Order. Doc. Nos. 78 and 80. The Court further ordered the parties to meet and confer regarding the issues raised by the Motion for Protective Order and to file a stipulation setting forth their positions regarding the scope of the requested document production and examination in accordance with Local Bankruptcy Rule ("LBR") 7026-1(c)(3) (the "Discovery Stipulation").

B. Summary of the Parties' Positions as Set Forth in the Discovery Stipulation

The Rule 2004 Motion requests that the Debtors produce 33 categories (the "Categories") of documents. The parties have resolved their disputes with respect to production requests set forth in Categories 1–6, 12–13, 27, and 29. The parties have stipulated that the Debtors shall have until January 14, 2020 to produce documents responsive to the Rule 2004 Motion.

The parties' unresolved disputes are as follows:

1. Depositions in the Collection Actions

Debtors' Position

In connection with the Collection Actions, Creditors could request up to seven depositions each of the Debtors and as to the persons most knowledgeable of the Affiliates, for a total of 24 depositions. Being subjected to this many depositions would impose a significant burden upon the estate. Creditors should be required to conduct their discovery efficiently. Debtors should only be required to give two more depositions each, including being deposed as managing members of the Affiliates or any other entity. In the event the Court grants Creditors stay relief with respect to the Collection Actions before the District Court, any such relief should be subject to the Court's discovery order.

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Creditors' Position

The Debtors' request for a limitation of discovery in the Collection Actions should be denied as premature. Creditors have not yet sought the Debtors' depositions in the Collection Actions. Unless and until the Creditors seek such discovery, the Court should not rule upon the request.

2. Online Document Repository

Debtors' Position

Creditors should be required to upload into an online depository the approximately 100,000 pages of documents that have already been produced in response to prior subpoenas issued in connection with Creditors' attempts to enforce a prior stipulated judgment against Bonerts, so that all parties may have access to these documents. Creditors should be required to upload any further documents produced by the Debtors into the online depository.

Creditors' Position

Through this request, Debtors are attempting to impose additional obligations upon the Creditors. It is unclear what would be accomplished by the creation of an online document repository, as no parties other than the Debtors and the Affiliates have requested access to the documents. Debtors have not cited any authority in support of this request and have not offered to share the expense of the proposed online repository. Finally, this issue was not raised by the Rule 2004 Motion.

3. Schedule of All Payments Made by Debtors to Fredman Lieberman Pearl LLP During the Six Years Preceding October 29, 2019

Debtors' Position

Category 30 requests the production of "a schedule of all payments made by the Debtors to Fredman Lieberman Pearl, LLP for the six years preceding October 29, 2019." (On December 2, 2019, the Court approved, over the Creditors' objection, the Debtors' application to employ Fredman Lieberman Pearl, LLP ("FLP") as their general bankruptcy counsel. Doc. No. 100.) Debtors should be required to produce a schedule of only the last four years of payments to FLP.

Creditors' Position

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There are allegations and evidence related to fraudulent transfers of assets going back to at least 2014. The Debtors could have caused one of their Affiliates to pay FLP for services that FLP provided to the Debtors. That has already happened in this case. In its Employment Application, FLP disclosed that it had returned to the Debtors a \$60,000 prepetition payment for non-bankruptcy legal services. Debtors further disclosed that the payment had been replaced by two of the Affiliates.

A fraudulent conveyance made to evade payment to creditors would be non-dischargeable under § 523(a)(2)(A). *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1585, 194 L. Ed. 2d 655 (2016). Therefore, the documents are properly requested under Rule 2004.

4. All Documents Pertaining to the Michael Bonert and Vivien Bonert Revocable Trust in the Ten Years Preceding October 29, 2019

Debtors' Position

Category 33 requests the production of "[a]ll documents and statements for the Michael Bonert Revocable Trust in the ten (10) years preceding October 29, 2019." The request is overbroad as to time and vague and ambiguous as to the requested documents. Debtors should be required to produce only the last four years of documents and statements.

Creditors' Position

The Michael Bonert and Vivien Bonert Revocable Trust (the "Debtors' Trust") was created in 2010. According to the Debtors' schedules, the trust owns significant assets. Assets could have been transferred from the Debtors to the Debtors' Trust, and then from the Debtors' Trust to other entities, taking the assets out of the bankruptcy estate. The documents are appropriately requested under Rule 2004.

II. Findings and Conclusions

Civil Rule 26(c) allows a party to move for a protective order with respect to a discovery demand. Under Rule 26(c), the "court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including by "forbidding the disclosure or discovery." The "party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted." *Phillips ex rel. Estates of Byrd v. Gen. Motors*

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Corp., 307 F.3d 1206, 1210–11 (9th Cir. 2002).

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1. Depositions in the Collection Actions

It is not appropriate for the Court to adjudicate the scope of discovery in the Collection Actions at this time. The hearing on the Motions to Remand filed by two of the Creditors is set for January 8, 2020. It has not been determined whether the Collection Actions will remain before this Court.

If in the future Creditors seek discovery in the Collection Actions which Debtors contend is not "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit," Civil Rule 26(b)(1), Debtors may move for limitations on the proposed discovery.

2. Online Document Repository

The Debtors' request that Creditors be required to bear the expense of maintaining an online document repository for documents that have been or will be produced by the Debtors is denied. The Debtors have failed to cite any authority in support of their position that Creditors should be required to pay for a service which will benefit the Debtors. Further, the Debtors' request is not properly before the Court, as it was not put at issue in the Rule 2004 Motion or the subsequent Motion for Protective Order.

3. Schedule of All Payments Made by Debtors to FLP During the Six Years Preceding October 29, 2019

Debtors' position is that they should be required to produce a schedule of only the last four years of payments to FLP, as opposed to six years of payments as demanded by Creditors.

A Rule 2004 examination "may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Bankruptcy Rule 2004(b). "The scope of a Rule 2004 examination is exceptionally broad Examinations under Rule 2004 are allowed for the 'purpose of discovering

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assets and unearthing frauds' and have been compared to a 'fishing expedition.'" *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999) (internal citation omitted).

Creditors' theory is that the Debtors may have caused one of their wholly-owned Affiliates to make payments to FLP on account of legal services that FLP provided to the Debtors, thereby draining the Affiliate of the funds necessary to satisfy its obligations to Creditors.

If Creditors can show that the Debtors are personally liable for the obligations of the Affiliate, and if the Debtors did in fact cause the Affiliate to transfer assets for the purpose of evading its obligations to Creditors, such indebtedness could potentially be excepted from the Debtors' discharge. *See Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1585, 194 L. Ed. 2d 655 (2016) (holding that fraudulent conveyances made to evade payments to creditors are non-dischargeable under § 523(a)(2)(A)). In view of the broad scope of Rule 2004, the Court finds it appropriate to require the Debtors to disclose all payments made by the Debtors to FLP for the six years preceding October 29, 2019, as requested by Creditors.

4. All Documents Pertaining to the Michael Bonert and Vivien Bonert Revocable Trust in the Ten Years Preceding October 29, 2019

Debtors' position is that they should be required to produce only the last four years of documents pertaining to the Debtors' Trust, as opposed to ten years of documents demanded by Creditors.

If Debtors transferred assets from the Debtors' Trust to other entities for the purpose of evading payments to creditors, the Debtors' liability for the fraudulent transfers could potentially be non-dischargeable under § 523(a)(2)(A). *See Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1585, 194 L. Ed. 2d 655 (2016) (holding that fraudulent conveyances made to evade payments to creditors are non-dischargeable under § 523(a)(2)(A)).

All assets of the Debtors' Trust have been separately scheduled as assets of the Debtors. *See* Schedule A/B: Property [Doc. No. 32] at ¶ 25. Notwithstanding the broad scope of Rule 2004, the Court finds the Creditors' demand for ten years' of documents pertaining to the Debtors' Trust to be excessive. Creditors have offered no concrete evidence in support of their theory that the Debtors' Trust facilitated fraudulent conveyances to avoid payments to Creditors. Given that all the assets of the Debtors' Trust have been separately scheduled, the Court will require the Debtors to produce only those documents going back six years from October 29, 2019. The six-

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year lookback period is the same as the lookback period for payments made by the Debtors to FLP (see Section II.3, above).

III. Conclusion

Based upon the foregoing, the Motion for Protective Order is GRANTED IN PART and DENIED IN PART. Except as set forth above, the Debtors shall produce the documents specified in the Rule 2004 Motion by no later than January 14, 2020.

Within seven days of the hearing, the Debtors shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The hearings on the Motions to Remand were set December 11, 2019, but were continued by the Court to a date subsequent to the December 20, 2019 claims bar date. The Court found that the Motions to Remand could not be adjudicated until it was known whether Capitol and Stratas would file proofs of claim against the estate.

Party Information

Debtor(s):

Michael Bonert

Represented By
Alan W Forsley

Joint Debtor(s):

Vivien Bonert

Represented By
Alan W Forsley

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2:18-15865 Fatemeh V. Mahdavi

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#23.00 Status conference to address the dispute concerning the IRSs entitlement to funds originally earmarked for the Debtors homestead exemption, and any developments thereof

fr. 9-25-19

Docket 86

*** VACATED *** REASON: CONTINUED 2-19-20 AT 11:00 A.M.

Tentative Ruling:

9/24/2019 (Amended after hearing)

For the reasons set forth below, the Sale Motion is GRANTED IN PART, with the exception of Provisions D and F.

Key Sale Terms:

- 1) Proposed purchaser: Abdulaziz M. Alathel or his nominee
- 2) Property for Sale: 1398 Davies Drive, Beverly Hills, CA 90210.
- 3) Purchase price: \$2,700,000
- 4) Overbids: The minimum overbid amount shall be \$2,710,000. Subsequent overbids shall be in increments of \$10,000.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion to (1) Approve Settlement Agreement Re Homestead Exemption; (2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and (3) Pay Real Estate Brokers' Commissions [Doc. No. 86] (the "Sale Motion")
 - a) Notice of [Sale Motion] [Doc. No. 87]
 - b) Notice of Sale of Estate Property [Doc. No. 88]
- 2) The United States of America's Opposition to Trustee's Motion 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [filed by United

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- States of America on behalf of IRS] [Doc. No. 95] (the "Opposition")
- 3) Trustee's 1) Reply to the United States of America's Opposition to, And 2) Supplement in Further Support of Motion to 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [Doc. No. 103] (the "Reply")
 - 4) Debtor Fatemeh V. Mahdavi's Reply to the United States of America's Opposition to, And 2) Supplement in Further Support of Motion to 1) Approve Agreement Re Homestead Exemption; 2) Confirm Sale of Real Property Commonly Known as 1398 Davies Drive, Beverly Hills, CA Free and Clear of Liens and Claims, and 3) Pay Real Estate Brokers' Commissions [Doc. No. 104] (the "Debtor's Reply")

I. Facts and Summary of Pleadings

Fatemeh Mahdavi (the "Debtor") filed a voluntary Chapter 7 petition on May 22, 2018. The Chapter 7 Trustee (the "Trustee") moves to sell real property located at 1398 Davies Drive, Beverly Hills, CA 90210 (the "Property"). The Trustee also seeks approval of a settlement agreement (attached to the Motion as Exhibit A) with the Debtor resolving treatment of her homestead exemption following the proposed sale.

The Proposed Agreement on the Homestead Exemption

The Debtor claimed a homestead exemption in the amount of \$175,000 in the Property, which is the community property of the Debtor and her non-filing spouse. Reference is made to the judgment lien (the "Judgment Lien") of Davoud and Illiad Ashraf Por (collectively, "Gharenbaghi"), which currently impairs the Property's title. Pursuant to a prior court-approved agreement between the Trustee and Gharenbaghi, it was stipulated that the Judgment Lien would be subordinated to the payout of 1) all administrative expenses and 2) the costs of the sale. *See* Motion, Ex. 6. Further, the Trustee represents that at the current purchase price of \$2,700,000, there is an insufficient amount of equity from the Property's sale to pay out Debtor's homestead exemption and the Judgment Lien. To that effect, the Debtor and the Trustee entered into an agreement (the "Homestead Agreement") providing in relevant part as follows:

1. The Debtor accepts the sale of the Property for the amount of \$2,700,000, subject to overbids, which the Trustee requests herein;
2. The Debtor will immediately seek to avoid the Judgment Lien to the

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- extent it impairs her homestead exemption;
3. Following the sale of the Property, the Debtor shall accept \$95,000 in full satisfaction of her claimed homestead exemption;
 4. The Trustee shall waive application of reinvestment procedures with respect to Debtor's homestead exemption.

See Motion, Ex. 1.

The Proposed Sale

The Trustee seeks authorization to sell the Property free and clear of liens, claims, and encumbrances, pursuant to §§ 363(b) and (f). The Trustee proposes the following treatment of the liens and encumbrances against the Property:

- 1) **Lien for real property taxes for fiscal year 2018–2019 (the "Property Tax Lien")**. The Trustee has paid all real property taxes accrued prior to the date of closing. The sale will be free and clear of this lien. In addition, the Trustee proposes to pay any undisputed real property taxes that become due for the fiscal year 2019-2020, currently estimated to be \$8,000, assuming that the Property is sold on or about early October. Disputed amounts, if any, will attach to the net sale proceeds.
- 2) **Deed of Trust in favor of ZB, N.A. dba California Bank & Trust, securing original indebtedness of \$367,500 (the "ZB DOT")**. The Trustee will pay through escrow all undisputed amounts owed on the ZB DOT, and any disputed amounts will attach to the net proceeds of the sale. The sale will be free and clear of the ZB DOT.
- 3) **Debtor's Homestead Exemption in the amount of \$175,000**. Provided the Homestead Agreement is approved by the Court, the Debtor will be paid pursuant to the terms therein.
- 4) **Judgment lien in the amount of \$1,289,722.22 in favor of Davoud Gharehbaghi and Iliad Ashraf Por**. The Judgment Lien is subject to the court-approved carve-out agreement (the "Carve-Out Agreement") [Doc. No. 50], which determines distribution of net sale proceeds to Gharehbaghi. Notwithstanding the terms of the Carve-Out Agreement, under the Homestead Agreement, Debtor will seek to avoid the Judgment Lien as it impairs her homestead exemption claim. If Debtor prevails on the avoidance motion, Trustee provides that the sale will be free and clear of the Judgment Lien as it

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will have been avoided. If Debtor does not prevail, Gharenbaghi will instead be paid according to the Carve-Out Agreement. Pursuant to the Carve-Out Agreement, Gharenbaghi may file a general, unsecured claim against the Debtor's estate to the extent net sale proceeds are insufficient to pay the Judgment Lien. The sale will either be free and clear of the Judgment Lien, or Gharenbaghi will be paid from the net sale proceeds.

- 5) **Judgment lien in the amount of \$754,265.74 in favor of Melissa Nourai and Parissa Nourai (the "Nourai Judgment")**. The sale will be free and clear of the Nourai Judgment. On June 14, 2019, the Trustee and the holders of the Nourai Judgment filed a stipulation (the "Nourai Stipulation"), which provides that the Nourai Judgment is deemed avoided pursuant to § 547 and preserved for the benefit of the bankruptcy estate pursuant to § 551.
- 6) **Lien for unsecured property taxes recorded by the Los Angeles County Tax Collector in the amount of \$127.73 (the "LA Tax Lien")**. The sale will be free and clear of this lien, because it was recorded subsequent to the filing of the petition in violation of the automatic stay and is therefore void *ab initio*.

The Trustee projects that after the above-liens are resolved, and the costs of sale are fully paid, the net proceeds totaling approximately \$176,514 will be largely consumed by Trustee's fees and the fees of professionals.

Opposition by the IRS

The Internal Revenue Service (the "IRS") filed an opposition on September 11, 2019, partially objecting to the Motion insofar as Trustee therein proposed to pay Debtor her homestead exemption ahead of an unsecured priority claim held by the IRS in the amount of \$389,874.89. The gravamen of the grounds asserted is that the Debtor's homestead exemption remains liable for accrued tax penalties under §§ 522(c) and 523(a) *inter alia*. The IRS further argues that the Motion was not properly served because the Trustee did not serve the U.S. Attorney's Office or the Attorney General pursuant to Federal Rules of Bankruptcy Procedure 9014(b) and 7004(b)(5). The IRS does not oppose the actual sale of the Property but instead requests the following: 1) payment of net sale funds on account of its priority claim, and 2) denial of the Trustee's proposal to pay Debtor her homestead exemption.

Trustee's Reply

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CONT... Fatemeh V. Mahdavi

Chapter 7

On September 18, 2019, the Trustee filed a Reply to the Opposition, contending that the preliminary title report of the Property (Motion, Ex. 2) does not indicate that the IRS in fact possesses any recorded lien or claim as to the Property. Moreover, the Trustee represents that following discussions with the United States Attorney, she understands that the IRS neither opposes the sale of the Property nor seeks to continue the Motion to a later date. To the extent that the Opposition concerns a dispute between Debtor and the IRS, the Trustee takes no position on the issue. However, the Trustee proposes that any order should include language instructing the Trustee to hold funds available for the Debtor's homestead exemption in a segregated account pending future resolution of such dispute.

The Debtor's Reply

The Debtor filed her own reply on September 18, 2019, agreeing with the Trustee's request to hold potential homestead exemption funds in a segregated account until future notice. The Debtor further justifies continuance of this hearing to have more time to mount an adequate defense of her rights to the homestead exemption. As to this argument, she provides a terse list of options she could potentially exercise in the future. Moreover, Debtor contends that it would be premature to determine the IRS's rights to the funds in question as her lien avoidance motion remains outstanding and may be opposed by Gharenbaghi [**Note 1**].

II. Findings and Conclusions

A. The Homestead Agreement is Partially Approved

With the exception of the provisions identified below, the Court determines that the Homestead Agreement is approved because it facilitates the sale of the Property, which is in the best interest of the creditors and consistent with the Trustee's statutory obligation to liquidate estate assets. The Court reserves approval of Provisions D and F of the Homestead Agreement, which relate to the \$95,000 payment to the Debtor on account of her homestead exemption. As discussed below, this issue will be determined on a later date, once the Debtor and the IRS have had an opportunity to submit supplemental briefing. Until such later date, the Homestead Agreement is

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partially approved.

Chapter 7

B. The Proposed Sale is Approved

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's statutory obligation to liquidate the estate's assets.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Court approves the Trustee's proposed treatment of the liens and encumbrances against the Property, and finds that the Property may be sold free and clear of such liens and encumbrances as requested by the Trustee. Pursuant to § 363(f) (3), the sale is free and clear of the Property Tax Liens and the ZB DOT because the purchase price of the Property exceeds the aggregate value of such liens. The sale is free and clear of the LA Tax Lien because such lien is void *ab initio*, having been recorded in violation of the automatic stay. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992). To the extent that any funds are available to the Debtor for her homestead exemption, such funds are to be placed on a segregated account until final resolution of the IRS's claim to such funds. As a result, the sale is free and clear of the homestead exemption declaration. The sale is free and clear of the Judgment Lien because Gharenbaghi will only be entitled to recover net sale proceeds, if any, pursuant to the Carve-Out Agreement, and otherwise may file a claim for any unsecured portion thereof. *See Motion, Ex. 6.* In any case, Gharenbaghi

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Chapter 7

has not filed any opposition to the Sale Motion. The sale is free and clear of the Nouraie Judgment, which has been deemed avoided pursuant to § 547 and has been preserved for the benefit of the bankruptcy estate pursuant to § 551, in accordance with the terms of the Nouraie Stipulation.

The Trustee is authorized to pay real estate brokers' commissions directly from escrow. Having reviewed the Declaration of Zizi Pak, the real estate broker who marketed the Property, the Court finds that proposed buyer Abdulaziz M. Alathel is a good faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

At hearing Trustee's counsel requested that the order further provide that the Sheriff take no further action on the outstanding writ of execution against the Debtor. The Court granted the request.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be at \$2,710,000, with subsequent overbids to be increments of \$10,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

C. Further Briefing is Required to Resolve the IRS's Entitlement to the Disputed Sale Proceeds

The IRS argues that the Debtor's 2016 tax debts are not dischargeable under § 523(a)(1) and entitled to priority under §507(a)(8). On reply, the Debtor asks to postpone determination of this issue to a later date, once she has had the opportunity to review her options and properly contest the IRS's claim. The Court is amenable to the Debtor's request and agrees that adequate consideration of this issue requires supplemental briefing by Debtor and the IRS. The continuance of this issue to a later date is also appropriate in light of the Debtor's pending lien avoidance motion, which

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Chapter 7

concerns the same funds and the homestead exemption at issue here. For the reasons set forth above, the Court instructs the Trustee to hold funds available for the Debtor's homestead exemption in a separate account pending an order from the Court resolving the dispute between the Debtor and the IRS.

III. Conclusion

Based upon the foregoing, the Homestead Agreement is PARTIALLY APPROVED, as set forth above, and the Sale Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

A status conference hearing shall be calendared on December 15, 2019 at 10:00 a.m. to address the dispute concerning the IRS's entitlement to funds originally earmarked for the Debtor's homestead exemption, and any developments thereof. ~~is CONTINUED to January 8, 2020, with the following briefing schedule: the IRS's Supplemental Opposition, if any, shall be filed on or before December 25, 2019; and the Debtor's Supplemental Reply, if any, shall be filed on or before January 1, 2020.~~

Note 1: As of September 23, 2019, Gharenbaghi has not filed any opposing papers to Debtor's lien avoidance motion.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel
Michael G D'Alba

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2:17-20082 Uprising Creative, LLC

Chapter 7

#100.00 APPLICANT: Trustee - Wesley H. Avery

Hearing re [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

Except for the *Comments to Trustee's Final Report Concerning Requested Fees of the Kogan Law Firm, APC* [Doc. No. 90], filed by the Kogan Law Firm, APC (the "Kogan Firm"), no objection has been filed in response to the Trustee's Final Report. For the reasons set forth in the tentative ruling on the Kogan Firm's Fee Application, *see* Cal. No. 103, below, the Kogan Firm's request for an additional \$1,995.00 in fees is **DENIED**.

The Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$10,052.38

Total Expenses: \$133.24

Bond Payment to International Sureties, Inc.: \$122.10

Tax Payment to Franchise Tax Board: \$3,971.96

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Uprising Creative, LLC

Chapter 7

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo
Michael S Kogan

Trustee(s):

Wesley H Avery (TR)

Represented By
Michael S Kogan

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Chapter 7

#101.00 Bond Payments - INTERNATIONAL SURETIES

Hearing re [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

Except for the *Comments to Trustee's Final Report Concerning Requested Fees of the Kogan Law Firm, APC* [Doc. No. 90], filed by the Kogan Law Firm, APC (the "Kogan Firm"), no objection has been filed in response to the Trustee's Final Report. For the reasons set forth in the tentative ruling on the Kogan Firm's Fee Application, *see* Cal. No. 103, below, the Kogan Firm's request for an additional \$1,995.00 in fees is **DENIED**.

The Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$10,052.38

Total Expenses: \$133.24

Bond Payment to International Sureties, Inc.: \$122.10

Tax Payment to Franchise Tax Board: \$3,971.96

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Uprising Creative, LLC

Chapter 7

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo
Michael S Kogan

Trustee(s):

Wesley H Avery (TR)

Represented By
Michael S Kogan

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2:17-20082 Uprising Creative, LLC

Chapter 7

#102.00 Other State or Local Taxes (post-petition) - FRANCHISE TAX BOARD

Hearing re [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo
Michael S Kogan

Trustee(s):

Wesley H Avery (TR)

Represented By
Michael S Kogan

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2:17-20082 Uprising Creative, LLC

Chapter 7

#103.00 Attorney for Trustee (Other Firm) - Michael S. Kogan

Hearing re [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

On September 10, 2019, the Chapter 7 Trustee (the "Trustee") filed a *Notice to Professionals to File an Application for Compensation* (the "Compensation Notice") [Doc. No. 79], pursuant to Local Bankruptcy Rule ("LBR") 2016-1(c)(4)(B). The Compensation Notice advised professionals employed by the estate that the last day to file an application for compensation was October 1, 2019.

On March 4, 2019, the Kogan Law Firm, APC (the "Kogan Firm") filed a *Final Application for Payment of Compensation and Reimbursement of Expenses to Counsel for the Chapter 7 Trustee* (the "Fee Application") [Doc. No. 78]. The Fee Application requests fees in the amount of \$28,197.50 and expenses in the amount of \$168.32. On October 7, 2019, the Kogan Firm filed a *Supplemental Declaration of Michael S. Kogan in Support of Final Application for Payment of Compensation and Reimbursement of Expenses to Counsel for the Chapter 7 Trustee and Supplemental Request for Additional Fees* (the "Supplemental Decl.") [Doc. No. 83]. In the Supplemental Decl., the Kogan Firm requests an additional \$1,995.00 in fees beyond the \$28,197.50 in fees previously requested. The fees are sought on account of time spent by the Kogan Firm responding to the Trustee's request that the Kogan Firm prepare a declaration setting forth "the amount of funds in the estate ... and the amount and break down of all the claims filed," as well as "all the information necessary for the court, the creditors, and the UST to determine whether the requested fees are reasonable, and that the work benefitted the estate." Supplemental Decl. at ¶ 3. The Supplemental Decl. was not served upon all creditors.

The *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Notice") [Doc. No. 87], which was served upon all creditors, advised creditors that the Kogan Firm is seeking \$28,197.50 in fees. That is, the

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Notice did not inform creditors of the additional \$1,995.00 in fees sought by way of the Supplemental Decl.

On December 4, 2019, the Kogan Firm filed a document captioned *Comments to Trustee's Final Report Concerning Requested Fees of the Kogan Law Firm, APC* [Doc. No. 90], in which the Kogan Firm asserts that the additional fees of \$1,995.00 are allowable because they were incurred in connection with the preparation of the Kogan Firm's Fee Application.

Bankruptcy Rule 2002(a)(6) requires that "all creditors" receive at least 21 days' notice of "a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000." As discussed above, creditors have not received notice of the Kogan Firm's request for an additional \$1,995.00 in fees. In addition, the Supplemental Decl. was not filed by October 1, 2019, as required by LBR 2016-1(c)(4)(B).

Even if the Court were to overlook these substantial issues, the additional fees requested are grossly excessive in relation to the work performed. The additional information set forth in the Supplemental Decl. that is responsive to the Trustee's request consists of only two paragraphs and a copy of the Trustee's proposed distribution to unsecured creditors. All this information is available in the Trustee's Final Report. Further, without including the \$1,995.00 sought in the Supplemental Decl., the Kogan Firm seeks compensation of \$2,522.00 for preparing employment and fee applications. In view of the scope of the services performed by the Kogan Firm, compensation of \$2,522.00 for the preparation of fee and employment applications is more than sufficient. The Court will not allow the additional \$1,995.00 in fees requested in the Supplemental Decl.

Other than the fees requested in the Supplemental Decl., the Court finds the fees requested by the Kogan Firm to be reasonable, considering the nature and extent of the services performed and taking into account all relevant factors. The Court awards the fees and expenses set forth below:

Fees: \$28,197.50

Expenses: \$168.32

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please**

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CONT... Uprising Creative, LLC

Chapter 7

first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo
Michael S Kogan

Trustee(s):

Wesley H Avery (TR)

Represented By
Michael S Kogan

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2:17-20082 Uprising Creative, LLC

Chapter 7

#104.00 Accountant for Trustee (Other Firm) - CBIZ
VALUATION GROUP, LLC

Hearing re [87] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$50,000.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo
Michael S Kogan

Trustee(s):

Wesley H Avery (TR)

Represented By

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Los Angeles
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Michael S Kogan

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2:18-20865 Worldwide Marketing Solutions

Chapter 7

#105.00 APPLICANT: Timothy J. Yoo, Trustee

Hearing re [50] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$10,712.78 requested [*see* Doc. No. 49]

Total Expenses: \$36.58 requested [*see id.*]

Other: \$315 (to Regis Boyle, Jr. – Field Representative/Adjuster for Trustee's fees) [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By

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Worldwide Marketing Solutions

Carmela Pagay
Lindsey L Smith

Chapter 7

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2:18-20865 Worldwide Marketing Solutions

Chapter 7

#106.00 APPLICANT: LEVENE NEALE BENDER YOO & BRILL, Attorney for Trustee
Hearing re [50] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$32,919 approved [*see* Doc. No. 45]

Expenses: \$852.49 approved [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

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Worldwide Marketing Solutions

Lindsey L Smith

Chapter 7

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Hearing Room 1568

11:00 AM

2:18-20865 Worldwide Marketing Solutions

Chapter 7

#107.00 APPLICANT: MENCHACA & COMPANY, LLP, Accountant for Trustee

Hearing re [50] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,702 approved [*See* Doc. No. 44]

Expenses: \$58.20 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By

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Worldwide Marketing Solutions

Carmela Pagay
Lindsey L Smith

Chapter 7

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2:18-20865 Worldwide Marketing Solutions

Chapter 7

#108.00 Other: REGIS BOYLE, JR, Field Representative / Adjuster for Trustee

Hearing re [50] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/17/2019

See Cal. No. 105, incorporated in full by reference.

Party Information

Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Lindsey L Smith

United States Bankruptcy Court
Central District of California
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Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

#1.00 Hearing
RE: [67] Motion to Approve Compromise Under Rule 9019 re **Non-Verizon Defendants**

fr. 11-20-19

Docket 67

*** VACATED *** REASON: PER ORDER ENTERED 12-16-19

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#2.00 Hearing
RE: [39] Motion to Dismiss Adversary Proceeding of U.S. Bank National
Association as Notes Trustee

FR. 11-21-19

Docket 39

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Represented By

Jason D Strabo

Clark Whitmore

Jason M Reed

Megan Preusker

Nathan F Coco

Mark Shinderman

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

James Cornell Behrens
Alexandra Achamallah

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#3.00 Hearing re [40] Motion To Dismiss Amended Complaint

FR. 11-21-19

Docket 0

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Represented By

Abigail V O'Brient

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

Alexandra Achamallah

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01166 Official Committee of Unsecured Creditors of Verit v. UMB Bank, National

#4.00 Status Hearing

RE: [28] Amended Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association by Alexandra Achamallah on behalf of Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against all defendants. (RE: related document(s)1 Adversary case 2:19-ap-01166. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against UMB Bank, National Association. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) filed by Plaintiff Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.). (Attachments: # 1 Redline of Initial Complaint and First Amended Complaint) (Achamallah, Alexandra)

fr. 12-10-19

Docket 28

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

UMB Bank, National Association

Represented By

Abigail V O'Brient

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Plaintiff(s):

Official Committee of Unsecured

Represented By

Mark Shinderman

Alexandra Achamallah

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:19-01165 Official Committee of Unsecured Creditors of Verit v. U.S. Bank National

#5.00 Status Hearing

RE: [30] Amended Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association by Alexandra Achamallah on behalf of Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against all defendants. (RE: related document(s)1 Adversary case 2:19-ap-01165. Complaint by Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. against U.S. Bank National Association. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) filed by Plaintiff Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.). (Attachments: # 1 Redline of Initial Complaint and First Amended Complaint) (Achamallah, Alexandra)

fr. 12-10-19

Docket 30

***** VACATED *** REASON: CONTINUED 1-8-20 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Defendant(s):

U.S. Bank National Association

Represented By

Jason D Strabo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, December 19, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Clark Whitmore
Jason M Reed
Megan Preusker
Nathan F Coco
Mark Shinderman

Plaintiff(s):

Official Committee of Unsecured

Represented By
Mark Shinderman
James Cornell Behrens
Alexandra Achamallah

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by
**AppleCare Medical Group, Inc.
AppleCare Medical Group, St. Francis Inc.
AppleCare Medical Management, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1857

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Patrick Maxcy
Steven J Kahn

Movant(s):

AppleCare Medical Group

Represented By
Latonia Williams
Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 0

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing re [1572] and [1849] Cure Objection Asserted by Roche Diagnostics Corporation

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1849

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Roche Diagnostics Corporation

Represented By
Paul J Laurin
David M Powlen
Kevin Collins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#4.00 Hearing re [1572] and [2144] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 2144

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Patrick Maxcy
Steven J Kahn

Movant(s):

All Care Medical Group, Inc.

Represented By
Bryan L Ngo
Susan I Montgomery

AppleCare Medical Group St.

Represented By
Susan I Montgomery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [1882] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1882

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Quadramed Affinity Corporation and

Represented By
Schuyler Carroll
Amir Gamliel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing re [1572] and [1930] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1930

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Aetna Life Insurance Company

Represented By

Jeffrey C Krause

Payam Khodadadi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1949

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

St. Vincent IPA Medical Corporation

Represented By
Mark A Neubauer
John Ryan Yant
Donald R Kirk

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#8.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1965

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

SCAN Health Plan

Represented By

Karl E Block

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

Daniel B Besikof

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1954

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Premier, Inc.

Represented By

Marianne S Mortimer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#10.00 Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1850

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Cigna Healthcare of California, Inc.,

Represented By
William M Rathbone
Jeffrey C Wisler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1940

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Movant(s):

Health Net of California, Inc.

Represented By

Cristina E Bautista

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT...

Verity Health System of California, Inc.

William B Freeman

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#12.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1866

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Kaiser Foundation Hospitals

Represented By
Christopher E Prince

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#13.00 Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1890

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Abbott Laboratories Inc.

Represented By
Keith Patrick Banner
Brian L Davidoff
Samuel C Wisotzkey

Alere Informaties, Inc.

Represented By
Brian L Davidoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing re [1572] and [1873] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1873

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

Smith & Nephew, Inc.

Represented By
Kevin M Eckhardt
Shannon E Daily
Robert A Rich

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1863] Cure Objection Asserted by **GE HFS, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19

Docket 1863

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Movant(s):

GE HFS, LLC

Represented By
John Mark Jennings
Lisa M Peters
Lisa M Peters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing
RE: [3009] Motion for approval of chapter 11 disclosure statement Notice of Hearing (With Court-Approved Dates) and Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting Related Relief; Memorandum of Points and Authorities In Support Thereof

fr. 12-12-19

Docket 3009

***** VACATED *** REASON: PER ORDER ENTERED 12-26-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Rosa A Shirley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 30, 2019

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing re [1572] and [2157] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19;
11-20-19; 11-20-19; 12-4-19; 12-11-19; 12-18-19

Docket 2157

***** VACATED *** REASON: CONTINUED TO JANUARY 7, 2020 AT
10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

Movant(s):

NantHealth, Inc.

Represented By
Bruce Bennett