

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

**Tuesday, January 7, 2020**

**Hearing Room 1568**

10:00 AM

**2:18-10408 Christina Marie Uzeta**

**Chapter 7**

**#1.00** HearingRE: [51] Motion RE: Objection to Claim Number 13 by Claimant Basilio Torices, Roxanne Martinez. Notice of Motion and Motion Objecting to Proof of Claim # 13 of Basilio Torices and Roxanne Martinez, Declaration of Christina Uzeta in Support, with Proof of Service (Lally, David)

Docket 51

**Tentative Ruling:**

1/6/2020

For the reasons set forth below, the Debtor's Objection is OVERRULED, and the Motion is DENIED without prejudice.

**Pleadings Filed and Reviewed**

1. Notice of Motion and Motion Objecting to Proof of Claim of Basilio Torices, Roxanne Martinez [Doc. No. 51] (the "Objection")
2. Notice of Objection to Claim [Doc. No. 54]
3. Claimants Basilio Torices and Roxanne Martinez's Opposition to Debtor Christina Uzeta's Motion Objecting to Proof of Claim Pursuant to FRBP 3007 [Doc. No. 55] (the "Opposition")
4. Reply to Opposition to Motion Objecting to Proof of Claim of Basilio Torices and Roxanne Martinez (the "Reply") [Doc. No. 56]
5. Debtor's Evidentiary Objections in Support of Reply to Opposition to Motion Objecting to Proof of Claim of Basilio Torices and Roxanne Martinez [Doc. No. 57]
6. Notice of Assets [Doc. No. 40]
7. Notice of Possible Dividend and Order Fixing Time to File Claims [Doc. No. 40]
8. Proof of Claim No. 13 [Doc. No. 55-1]

**I. Facts and Summary of Pleadings**

**A. Relevant Background Facts**

Christine Marie Uzeta (the "Debtor") filed this voluntary chapter 7 case on

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January 12, 2018 (the "Petition Date"). The Debtor's bankruptcy case was closed on July 5, 2018 and subsequently reopened on May 3, 2019. Rosendo Gonzalez was initially appointed chapter 7 trustee (the "Trustee") and re-assumed his appointment after the case was reopened. On August 14, 2019, the Trustee filed a *Notice of Assets* [Doc. No. 40]. The Court concurrently filed the *Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Notice of Claims Bar Date"), which set a deadline of November 18, 2019 (the "Claims Bar Date"), for creditors to file proofs of claim.

On November 22, 2019, Basilio Torices and Roxanne Martinez ("Claimants") filed an untimely Proof of Claim No. 13 (the "Claim") in this matter, asserting a claim for \$18,900 premised upon a "Business Purchase Agreement" [Doc. No. 55-1]. *See* Claim.

**B. The Non-Dischargeability Action**

On April 16, 2018, the Claimants initiated an adversary proceeding by filing a complaint (the "Non-Dischargeability Complaint") against Debtor, alleging that the damages they incurred in connection with Debtor's willful and malicious actions were non-dischargeable under 11 U.S.C. § 523(a)(6) (the "Non-Dischargeability Action") (Adv. Case No. 2:18-ap-01103-ER). On December 19, 2019, the Debtor received a favorable judgment on the Non-Dischargeability Complaint.

**C. The Objection [Note 1]**

On November 25, 2019, the Debtor filed an objection to the Claim [Doc. No. 51] (the "Objection"). Based on the arguments set forth in the Objection, the Debtor argues that the Claim must be disallowed in its entirety on the following three grounds: 1) Debtor was not served with the Claim, 2) the Claim was inexcusably filed late, and 3) Debtor disputes that she owes Claimants any money. The Debtor did not address the issue of standing in the moving papers.

The Claimants filed a timely opposition asserting, among other things, that the

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Debtor failed to properly serve the Objection in adherence to FRBP 3007, which is a fatal deficiency on behalf of Debtor [Doc. No. 55]. The Opposition is supported by declarations submitted by both Claimants and their counsel of record. The Claimants further explain that the Claim was timely filed on November 18, 2019, but due to a technical misunderstanding of the Court's filing platform, the Claim was filed in a matter sharing an identical case number as this case. *See* Declaration of Nick A. Urick, ¶¶ 2-4 (attached in support of the Opposition). Claimants contend that there is "no dispute" that they are entitled to the full amount of the Claim, which is comprised of payments made to the Debtor that were never repaid. *See* Declaration of Basilio Torices, ¶¶ 6-8. Finally, as with the Debtor, the issue of standing is not discussed by the Claimants.

On December 27, 2019, the Debtor filed a timely reply and evidentiary objections against all three declarations supporting the Opposition [Doc. No. 48].

As of the date of this tentative ruling, the Trustee has not filed any response.

## **II. Findings of Fact and Conclusions of Law**

### **A. The Debtor Has Not Established Her Standing to Object to the Claim [Note 2]**

A timely filed proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). The term "party in interest" is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)). Standing is a jurisdictional issue that bankruptcy courts may raise *sua sponte*. *See In re Euell*, 271 B.R. 388, 390 (Bankr. D. Col. 2002) ("Federal courts have an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines.'") (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990)); *see also Menk v. LaPaglia (In re Menk)*, 241 B.R. 896, 903 (B.A.P. 9th Cir. 1999).

#### **1. The Debtor lacks standing to object to the Claim at this stage.**

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Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and, therefore, is not an "aggrieved person." *Lona*, 393 B.R. at 4; *see also In re I & F Corp.*, 219 B.R. 483 (Bankr. S.D. Ohio 1998) (chapter 7 debtor lacked standing to file objections to proofs of claim). However, there are two recognized exceptions to the proposition that a chapter 7 debtor lacks standing to object to a creditor's proof of claim: (1) when disallowance of the claim would create a surplus case, with the excess amounts payable to the debtor; and (2) where the claim at issue would not be dischargeable. *See Wellman v. Ziino (In re Wellman)*, 378 B.R. 416 n. 5 (B.A.P. 9th Cir. 2007) (stating that a chapter 7 debtor has "[s]tanding to object to claims ... when there is a sufficient possibility of a surplus to give the chapter 7 debtor a pecuniary interest or when the claim involved will not be discharged."); *see also In re Lona*, 393 B.R. 1, 4 (Bankr. N.D. Cal. 2008) (citing *In re Willard*, 240 B.R. 664, 668 (Bankr. D. Conn. 1999); *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953)). The Ninth Circuit Bankruptcy Appellant Panel recently reaffirmed this conclusion:

In the claim objection context, a chapter 7 debtor, 'in its individual capacity, lacks standing to object unless it demonstrates that it would be 'injured in fact' by the allowance of the claim...So when the 'estate is insolvent, a chapter 7 debtor ordinarily lacks standing to object to proofs of claim.' But when 'there is a sufficient possibility of a surplus to give the chapter 7 debtor a pecuniary interest or when the claim involved will not be discharged [ ]' the chapter 7 debtor has standing.

*In re Doorman Prop. Maint.*, 2018 WL 3041128, at \*6 (B.A.P. 9th Cir. June 19, 2018) (internal citations omitted). The burden is on the debtor to provide sufficient evidence that disallowance of the contested claim will produce a surplus distribution to the debtor. *In re Walker*, 356 B.R. 834, 847 (Bankr. S.D. Fla. 2006) (citing *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 608 (7th Cir. 1998)).

Here, the Debtor has failed to carry her burden to show that she is an "aggrieved person" with standing to disallow the Claim. First, the Court notes that Debtor prevailed on the Claimants' Non-Dischargeability Complaint, and as such, the full amount of the Claim will be subject to discharge. Second, the estate is presently insolvent. Accordingly, the Debtor has no right to a surplus because even discounting

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**Christina Marie Uzeta**

**Chapter 7**

the Claim amount (\$18,900), the sum of all other claims and administrative expenses (approximately \$102,198.12) still surpasses estate assets (approximately \$48,050.48) by a significant margin [**Note 3**]. The Debtor does not explain why she has an interest in the distribution of estate assets or how her rights would be affected by the allowance or disallowance of the Claim, if at all. The Court cannot determine that the Debtor has standing because the estate is currently insolvent, and whether the Trustee will succeed in recovering additional estate funds from any other administrable assets remains unknown. In sum, the Debtor has not established standing to assert this claim objection.

### **III. Conclusion**

Based on the foregoing, Debtor's Objection is **OVERRULED**, and the Motion is **DENIED** without prejudice.

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

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

**Note 1:** Because the Court finds that the Debtor lacks standing to object to the Claim, the Court has not included a detailed summary of the parties' substantive arguments.

**Note 2:** For the same reason stated above, the Court will not address the procedural deficiency issues, or the merits of any other of the parties' substantive arguments.

**Note 3:** The total amount of claims against the estate (\$114,023.12) reduced by the Claim amount (\$18,900) is \$95,123.12. *See* Claims Register. As of the preparation of this tentative ruling, the estate has generated gross receipts of \$90,000 from the sale of

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Debtor's liquor license. From such sale proceeds, the Court authorized the Trustee to pay encumbrances, liens, and exemptions totaling approximately \$41,949,52. *See* Doc. No. 48. Therefore, the estate currently possesses net receipts in the approximate sum of \$48,050.48. Separately, the Trustee is entitled to reasonable compensation of approximately \$7,075 pursuant to 11 U.S.C. § 326.

**Party Information**

**Debtor(s):**

Christina Marie Uzeta

Represented By  
Heather J Canning  
David Brian Lally

**Trustee(s):**

Rosendo Gonzalez (TR)

Pro Se

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#2.00** Hearing re [3634] Official Committee Of Unsecured Creditors Omnibus  
Objection To Claims Filed By U.S. Bank National Association, UMB Bank, N.A.,  
And Wells Fargo Bank, National Association, As Trustees

Docket 0

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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**2:19-20228 Sheila G. Scott**

**Chapter 11**

**#3.00** Hearing  
RE: [30] Notice of Motion and Motion in Individual Ch 11 Case for Order  
Employing Professional (LBR 2014-1): Douglas Elliman of California, Brielle  
Cohen as Real estate broker/agent

Docket 30

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

1/6/2020

Order entered. Hearing is VACATED.

**Party Information**

**Debtor(s):**

Sheila G. Scott

Represented By  
Robert S Altagen



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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#4.00 Hearing re [1572] and [1849 ] Cure Objection Asserted by Roche Diagnostics Corporation**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1849

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**Movant(s):**

Roche Diagnostics Corporation

Represented By  
Paul J Laurin  
David M Powlen  
Kevin Collins

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing re [1572] and [1882 ] Cure Objection Asserted by **Quadramed Affinity Corporation and Picis Clinical Solutions Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1882

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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**Chapter 11**

**Movant(s):**

Quadramed Affinity Corporation and

Represented By  
Schuyler Carroll  
Amir Gamliel

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#6.00** Hearing re [1572] and [1949] Cure Objection Asserted by **St. Vincent IPA Medical Corporation**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1949

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

St. Vincent IPA Medical Corporation

Represented By

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**Verity Health System of California, Inc.**

Mark A Neubauer  
John Ryan Yant  
Donald R Kirk

**Chapter 11**

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing re [1572] and [1954] and [2066] Cure Objection Asserted by **Premier, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1954

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

Premier, Inc.

Represented By

Marianne S Mortimer

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#8.00** Hearing re [1572] and [1940] Cure Objection Asserted by **Health Net of California, Inc**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1940

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

Health Net of California, Inc.

Represented By

Cristina E Bautista

William B Freeman



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**Chapter 11**

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#9.00** Hearing re [1572] and [1890] Cure Objection Asserted by **Abbott Laboratories Inc. and Alere Informatics, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19; 12-30-19

fr. 12-18-19

Docket 1890

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

Abbott Laboratories Inc.

Represented By

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

Keith Patrick Banner  
Brian L Davidoff  
Samuel C Wisotzkey

Alere Informaties, Inc.

Represented By  
Brian L Davidoff

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#10.00** Hearing re [1572] and [1863 ] Cure Objection Asserted by **GE HFS, LLC**  
fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1863

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**Movant(s):**

GE HFS, LLC

Represented By  
John Mark Jennings  
Lisa M Peters  
Lisa M Peters

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing re [1572] and [2157 ] Cure Objection Asserted by **Nantworks LLC**

fr. 4-17-19; 6-5-19; 7-10-19, 8-7-19; 8-21-19; 9-4-19; 10-9-19; 10-23-19; 11-6-19;  
11-20-19; 11-20-19; 12-4-19; 12-11-19; 12-18-19; 12-30-19

Docket 2157

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By  
Samuel R Maizel  
John A Moe II  
Tania M Moyron  
Claude D Montgomery  
Sam J Alberts  
Shirley Cho  
Patrick Maxcy  
Steven J Kahn

**Movant(s):**

NantHealth, Inc.

Represented By  
Bruce Bennett

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#12.00** Hearing re [1572] and [1873 ] Cure Objection Asserted by **Smith & Nephew, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1873

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**Movant(s):**

Smith & Nephew, Inc.

Represented By  
Kevin M Eckhardt  
Shannon E Daily  
Robert A Rich



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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#13.00 Hearing re [1572] and [1866] Cure Objection Asserted by Kaiser Foundation Hospitals**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1866

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**Movant(s):**

Kaiser Foundation Hospitals

Represented By  
Christopher E Prince

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#14.00** Hearing re [1572] and [1850] Cure Objection Asserted by **Cigna Healthcare of California, Inc., and Llife Insurance Company of North America**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1850

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

Cigna Healthcare of California, Inc.,

Represented By

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

**Tuesday, January 7, 2020**

**Hearing Room 1568**

10:00 AM

**CONT...**

**Verity Health System of California, Inc.**

William M Rathbone

Jeffrey C Wisler

**Chapter 11**

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

Tuesday, January 7, 2020

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing re [1572] and [1965] and [2162] Cure Objection Asserted by **SCAN Health Plan**

fr. 4-1-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1965

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

SCAN Health Plan

Represented By

Karl E Block

Daniel B Besikof

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Tuesday, January 7, 2020**

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10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#16.00** Hearing re [1572] and [1930 ] Cure Objection Asserted by **Aetna Life Insurance Company**

fr. 4-17-19; 6-5-19, 8-7-19;9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1930

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

**Movant(s):**

Aetna Life Insurance Company

Represented By

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Tuesday, January 7, 2020**

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**CONT...**

**Verity Health System of California, Inc.**

Jeffrey C Krause

Payam Khodadadi

**Chapter 11**



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Los Angeles  
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10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#17.00 Hearing re [1572] and [2144 ] Cure Objection Asserted by AppleCare Medical Group St. Francis, Inc., Interested Party All Care Medical Group, Inc.**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

FR. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 2144

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

Steven J Kahn

**Movant(s):**

All Care Medical Group, Inc.

Represented By

Bryan L Ngo

Susan I Montgomery

AppleCare Medical Group St.

Represented By

Susan I Montgomery

**United States Bankruptcy Court  
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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#18.00** Hearing re [1572] and [1858] Cure Objection Asserted by UnitedHealthcare Ins. Co

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 0

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

United States Bankruptcy Court  
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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing re [1572] and [1857] and [2144] Cure Objection Asserted by  
**AppleCare Medical Group, Inc.**  
**AppleCare Medical Group, St. Francis Inc.**  
**AppleCare Medical Management, LLC**

fr. 4-17-19; 6-5-19, 8-7-19; 9-4-19

fr. 9-30-19

fr. 10-16-19

fr. 10-30-19

fr. 12-4-19

fr. 12-18-19; 12-30-19

Docket 1857

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 1-6-20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

Steven J Kahn

**Movant(s):**

AppleCare Medical Group

Represented By  
Latonia Williams  
Susan I Montgomery

**United States Bankruptcy Court  
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**Tuesday, January 7, 2020**

**Hearing Room 1568**

11:00 AM

**2:18-10616 Manuel Macias**

**Chapter 7**

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

**#100.00** Status Hearing

RE: [1] Adversary case 2:19-ap-01128. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Janet Estrada, Steven Molina. (Charge To Estate). -Complaint to Avoid Voidable Transactions and for Turnover Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (D'Alba, Michael)

fr. 7-16-19; 10-15-19; 11-5-19

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED 2-19-20 AT 11:00 A.M.**

**Tentative Ruling:**

7/15/2019

Default was entered against both Defendants on June 19, 2019. Having reviewed Plaintiff's Unilateral Status Report, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) Plaintiff shall file a Motion for Default Judgment (the "Motion") by no later than **August 16, 2019**. The Motion shall be filed on a negative-notice basis, pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).
- 2) All litigation dates and deadlines previously ordered by the Court are VACATED.
- 3) A continued Status Conference shall be held on **October 15, 2019, at 10:00 a.m.** Plaintiff shall file a Unilateral Status Report by no later than fourteen days prior to the hearing. In the event default judgment has been entered, the continued Status Conference will go off calendar.

The Court will prepare and enter an appropriate order.

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

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**CONT... Manuel Macias**

**Chapter 7**

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

<b>Party Information</b>
--------------------------

**Debtor(s):**

Manuel Macias

Represented By

Jennifer Ann Aragon - SUSPENDED -

**Defendant(s):**

Janet Estrada

Pro Se

Steven Molina

Pro Se

**Plaintiff(s):**

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

Michael G D'Alba

**Trustee(s):**

Brad D Krasnoff (TR)

Represented By

Eric P Israel

**United States Bankruptcy Court  
Central District of California  
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**2:18-10616 Manuel Macias**

**Chapter 7**

Adv#: 2:19-01128 Krasnoff, Chapter 7 Trustee v. Estrada et al

**#101.00** Hearing  
RE: [43] Motion to set aside RE: Entry of defaults against Janet Estrada and Steven Molina

FR. 11-5-19

Docket 43

**\*\*\* VACATED \*\*\* REASON: CONTINUED 2-19-20 AT 11:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Manuel Macias

Represented By  
Jennifer Ann Aragon - SUSPENDED -

**Defendant(s):**

Janet Estrada

Represented By  
Todd L Turoci

Steven Molina

Represented By  
Todd L Turoci

**Plaintiff(s):**

Brad D. Krasnoff, Chapter 7 Trustee

Represented By  
Michael G D'Alba

**Trustee(s):**

Brad D Krasnoff (TR)

Represented By  
Eric P Israel



**United States Bankruptcy Court  
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**Tuesday, January 7, 2020**

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11:00 AM

**2:19-17062 Shamim Ahemmed**

**Chapter 7**

Adv#: 2:19-01423 Cruz v. Ahemmed

**#102.00** HearingRE: [19] Motion to Dismiss Adversary Proceeding

Docket 19

**Tentative Ruling:**

1/6/2020

For the reasons set forth below, the Motion to Dismiss is GRANTED, with leave to amend.

**Pleadings Filed and Reviewed:**

- 1) First Amended Complaint Objecting to Discharge Pursuant to 11 U.S.C. § 523(a)(2)(A) and (6) (the "Complaint") [Doc. No. 12]
- 2) Motion for Order Dismissing First Amended Complaint Pursuant to Federal Rule of Civil Procedure § 12(b)(6) and Federal Rule of Bankruptcy Procedure § 7012(b) (the "Motion") [Doc. No. 19]
- 3) Opposition to Debtor's Motion to Dismiss First Amended Complaint Pursuant to Rule 12(b)(6) (the "Opposition") [Doc. No. 26]
- 4) Defendant's Reply to Opposition to Motion to Dismiss Under FRCP 12(b)(6) (the "Reply") [Doc. No. 27]

**I. Facts and Summary of Pleadings**

On March 6, 2008, Miguel Hernandez Cruz (the "Plaintiff") filed a complaint in the Los Angeles Superior Court (the "State Court") against Shamin Ahemmed (the "Defendant") and North End Pizzeria, asserting claims for wage and hour violations (the "State Court Complaint"). On June 16, 2009, the State Court entered judgment in favor of Plaintiff and against Defendant and North End Pizzeria (the "State Court Judgment"). The State Court Judgment provides that Defendant and North End Pizzeria are jointly and severally liable to Plaintiff in the amount of \$107,100 for uncompensated overtime, \$71,260 for uncompensated double time hours, and \$124,866 in prejudgment interest.

On June 17, 2019, Defendant filed a voluntary Chapter 7 petition. On September 23, 2019, Plaintiff timely filed a *Complaint Objecting to Discharge Pursuant to 11*

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**CONT... Shamim Ahemmed**

**Chapter 7**

*U.S.C. § 523(a)(6)* (the "Original Complaint") [Doc. No. 1]. After Plaintiff filed a motion to dismiss the Original Complaint for failure to state a claim upon which relief could be granted, Defendant filed the operative *First Amended Complaint Objecting to Discharge Pursuant to 11 U.S.C. § 523(a)(2)(A) and (6)* (the "Complaint") [Doc. No. 12] as of right, pursuant to Civil Rule 15(a)(1)(B).

The Complaint alleges that the indebtedness established by the State Court Judgment is non-dischargeable pursuant to § 523(a)(2)(A) and (a)(6). The material allegations of the Complaint are as follows:

The [State Court Judgment] was based on the following facts: Plaintiff was employed by the Defendant as a worker in Defendant's business known as North End Pizzeria, located in Los Angeles County. Plaintiff was employed between 2000 and 2008. He worked on average 70 hours a week and was only [paid] regular minimum hourly wages....

Plaintiff alleges that Defendant knew that he intentionally and illegally failed to pay Plaintiff lawful wages, that he took advantage of Plaintiff's outstanding work ethic, required Plaintiff work excessive hours without just compensation, and by failing to pay Plaintiff the lawful wages he was entitled to receive willfully and maliciously victimized Plaintiff without just cause or excuse, knowing at the time Defendant was so behaving he had a duty to obey the law and pay Plaintiff the lawful wages he was entitled to receive.

Complaint at ¶¶ 7 and 11.

Plaintiff moves to dismiss the Complaint for failure to state a claim upon which relief can be granted, pursuant to Civil Rule 12(b)(6). Plaintiff makes the following arguments in support of the Motion:

- 1) The Complaint fails to state a claim under § 523(a)(2)(A). The Complaint fails to allege that (a) Defendant made a false representation, (b) that Defendant knew the representation was false at the time it was made, (c) that Defendant made the representation with the purpose and intent of deceiving Plaintiff, (d) that Plaintiff relied upon the representation, or (e) that Plaintiff sustained damages as a result of the representation.
- 2) The Complaint fails to state a claim under § 523(a)(6). The Complaint does not allege any facts showing that Defendant had a subjective motive to inflict injury upon Plaintiff, or that Defendant harbored a subjective belief that injury

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**CONT...**

**Shamim Ahemmed**

**Chapter 7**

was substantially certain. The facts alleged in the Complaint are sufficient only to show that a breach of contract occurred.

Defendant opposes the Motion and makes the following arguments in support of his Opposition:

- 1) The Court must give preclusive effect to the State Court Judgment. The State Court Complaint asserted a claim for fraud. The State Court Judgment provides that Defendant is liable to Plaintiff on each of the claims for relief alleged in the State Court Complaint. The Complaint incorporates the State Court Judgment by reference. Because the State Court Judgment is based in part upon fraud, the Complaint sufficiently states claims under § 523(a)(2)(A) and (a)(6).
- 2) In the event the Court determines that the Complaint is not sufficiently pleaded, Plaintiff should be given leave to amend.

Plaintiff makes the following arguments in Reply to the Defendant's Opposition:

- 1) The State Court Judgment contains no findings of fact stating that the Defendant engaged in fraud. The State Court's Minute Order providing that judgment would be entered in Plaintiff's favor contains no finding of fraud. The State Court entered the State Court Judgment in the form proposed by Plaintiff. The reason that Plaintiff did not include a finding of fraud in the proposed form of judgment is that the State Court did not find that Defendant had engaged in fraud. Consequently, the State Court Judgment is not entitled to preclusive effect.
- 2) Plaintiff's Opposition quotes extensively from the State Court Complaint. Plaintiff cannot rely upon mere allegations to establish that Defendant engaged in fraud where there is no indication that the State Court made any findings as to the alleged fraud.
- 3) Plaintiff's Opposition does not address the sufficiency of the Complaint's allegations under § 523(a)(6). Plaintiff has apparently abandoned his argument with respect to the adequacy of those allegations.
- 4) Plaintiff has already amended the Complaint once. Plaintiff should not be provided an additional opportunity to amend.

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CONT... Shamim Ahemmed

Chapter 7

## II. Findings and Conclusions

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

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

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

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

### **A. The Complaint Fails to State a Claim Under § 523(a)(2)(A)**

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To state a claim for relief under § 523(a)(2)(A), a complaint must plausibly allege facts sufficient to enable the Court to draw the reasonable inference that the Defendant (1) made a representation (2) that the Defendant knew was false (3) for the purpose of

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CONT... Shamim Ahemmed

Chapter 7

deceiving the Plaintiff, and that (4) the Plaintiff relied upon the representation and (5) sustained damages as the proximate result of the misrepresentation having been made. *Ghomeshi v. Sabban (In re Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010).

Rather than specifically alleging facts necessary to establish the elements of § 523(a)(2)(A), the Complaint incorporates by reference the State Court Complaint. Such incorporation by reference does provide Defendant sufficient notice of the misconduct alleged. To state a claim under § 523(a)(2)(A), the Complaint must allege specific facts showing that Defendant engaged in conduct sufficient to establish liability under § 523(a)(2)(A). Those specific facts must be set forth in the body of the Complaint. Plaintiff's attempt to allege the elements of his claims through incorporation by reference of the State Court Complaint, which contains numerous allegations unrelated to Plaintiff's claims under § 523(a)(2)(A), makes it unreasonably difficult for Defendant to defend against the Complaint. The Complaint requires Defendant to guess at which of the allegations in the State Court Complaint pertain to the Plaintiff's § 523(a)(2)(A) claim.

**B. The Complaint Fails to State a Claim Under § 523(a)(6)**

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

The Complaint's cause of action under § 523(a)(6) fails for the same reason as the cause of action under § 523(a)(2)(A). That is, the Complaint fails to allege specific

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Los Angeles  
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CONT... **Shamim Ahemmed**

**Chapter 7**

facts showing that Defendant inflicted injury upon the Plaintiff, and that Defendant intended to inflict the injury or harbored a subjective belief that the injury was substantially certain. It is not sufficient for Plaintiff to attempt to allege his § 523(a)(6) claim by incorporating the State Court Complaint by reference.

**C. Plaintiff is Granted Leave to Amend**

To dismiss a complaint without leave to amend, the Court must find that “amendment would be futile.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011). As it may be possible for Plaintiff to allege facts stating claims under § 523(a)(2)(A) and (a)(6), the Court will grant Plaintiff leave to amend. However, in the event that Plaintiff’s Second Amended Complaint fails to state claims under these sections, the Court will most likely not grant further leave to amend.

**III. Conclusion**

Based upon the foregoing, the Motion is GRANTED, but Plaintiff is given leave to amend. Plaintiff shall file a Second Amended Complaint by no later than **January 21, 2020**. Upon the filing of the Second Amended Complaint, the Clerk of the Court will issue an updated Scheduling Order establishing the litigation deadlines that shall govern this action.

Defendant shall submit a proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

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

**Party Information**

**Debtor(s):**

Shamim Ahemmed

Represented By  
Julie J Villalobos

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**CONT... Shamim Ahemmed**

**Chapter 7**

**Defendant(s):**

Shamim Ahemmed

Represented By  
Lawrence R Fieselman  
Julie J Villalobos

**Plaintiff(s):**

Miguel Hernandez Cruz

Represented By  
Michael N Berke

**Trustee(s):**

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**2:18-13131 Dwight Gregory Stephens**

**Chapter 11**

**#103.00** HearingRE: [149] Motion For Final Decree and Order Closing Case. (with proof of service)

Docket 149

**Tentative Ruling:**

1/6/2020

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

**Pleadings Filed and Reviewed:**

- 1) Motion in Chapter 11 Case for Entry of A Final Decree and Order Closing Case [Doc. No. 149] (the "Motion")
- 2) Debtors Post-Confirmation Status Report #1 [Doc. No. 151]
- 3) No opposition to the Motion is on file

**I. Facts and Summary of Pleadings**

On August 27, 2019, the Court confirmed the Debtor's *Second Amended Individual Debtor's Chapter 11 Plan of Reorganization* (the "Plan") [Doc. No. 114]. Doc. No. 130. The Plan provides for the Debtor to make payments to creditors over a 60-month period.

The Debtor seeks entry of a final decree and an order administratively closing the case. The Debtor intends to file a motion to reopen the case and seek entry of a discharge once all payments to creditors have been made.

**II. Findings and Conclusions**

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

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



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CONT...

**Dwight Gregory Stephens**

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

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

Here, the order confirming the Plan has become final, the Debtor has commenced making payments under the Plan, and there are no pending adversary proceedings or contested matters. The Court finds that entry of a final decree is appropriate.

Upon completion of all payments under the Plan, the Debtor shall file a motion to reopen the case, followed by a motion seeking entry of a discharge.

A Post-Confirmation Status Conference is currently scheduled for January 22, 2020, at 10:00 a.m. Having reviewed the *Debtors' Post-Confirmation Status Report # 1*, the Court finds that the Debtor is performing under the Plan. The Post-Confirmation Status Conference is taken off calendar. Unless otherwise ordered by the Court, no further Post-Confirmation Status Conferences will be conducted.

Based upon the foregoing, the Motion is GRANTED. The Debtor shall submit a proposed order, incorporating this tentative ruling by reference, within seven days of the hearing. The Court will prepare and enter an order taking the Post-Confirmation Status Conference off calendar.

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

**Party Information**

**Debtor(s):**

Dwight Gregory Stephens

Represented By  
Marcus G Tiggs

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**2:18-20698 United International Mortgage Solutions, Inc.**

**Chapter 11**

**#104.00** HearingRE: [142] Motion Notice of Motion and Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (6205 Senford Ave., Los Angeles, CA 90056) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to 11 U.S.C. §364 and (3) Authorizing Payment of Secured Debt; Declaration of Sandra McBeth in Support Thereof, with Proof of Service

Docket 142

**Tentative Ruling:**

1/6/2020

For the reasons set forth below, the Financing Motions are GRANTED.

**Pleadings Filed and Reviewed**

1. Notice of Motion and Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (6205 Senford Avenue, Los Angeles) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to § 364 and (3) Authorizing Payment of Secured Debt [Doc. No. 142] (the "Senford Property Financing Motion")
2. Notice of Motion and Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Avenue, Los Angeles) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to § 364 and (3) Authorizing Payment of Secured Debt [Doc. No. 143] (the "Virgil Property Financing Motion")
3. Response to Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Avenue, Los Angeles) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to § 364 and (3) Authorizing Payment of Secured Debt [Doc. No. 146]
4. Response to Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Avenue, Los Angeles) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to § 364 and (3) Authorizing Payment of Secured Debt & Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Avenue, Los Angeles) Pursuant to 11 U.S.C. §§ 363 and 364; (2) Granting

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Lien to Postpetition Lender Pursuant to § 364 and (3) Authorizing Payment of Secured Debt [Doc. No. 148]

5. As of the preparation of this tentative ruling, no other response or opposition is on file

### **I. Facts and Summary of Pleadings**

Debtor and debtor-in-possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns three residential real properties:

- i. 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property");
- ii. 5935 Playa Vista Dr., #414, Playa Vista, CA 90094 (the "Playa Vista Property"); and
- iii. 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties").

The Virgil Property is a 5-unit residential rental property with a stated fair market value of \$1,300,000. *See* Doc. No. 8. The Debtor asserts that the Virgil Property is encumbered by an \$882,107 secured senior lien in favor of Seterus Inc. ("Seterus") and a \$50,000 junior lien in favor of Errol Gordon ("Mr. Gordon"). The Debtor states that it currently collects \$4,248.62 in monthly rent from the Virgil Property. On December 7, 2018, this Court entered an order granting Seterus' motion for relief from the automatic stay to proceed with a nonbankruptcy foreclosure with respect to the Virgil Property [Doc. No. 51].

The Senford Property is a single-family residence with an alleged fair market value of \$1,000,000. *See* Doc. No. 8. According to the Debtor, the Senford Property is subject to a \$285,000 senior lien held by Mr. Gordon and a property tax lien in the amount of \$97,939 held by the Los Angeles County Treasurer and Tax Collector (the "LACTTC").

On December 3, 2019, the Debtor concurrently filed two post-petition financing motions implicating interests in the Virgil and Senford Properties (respectively, the

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"Virgil Property Financing Motion" and the "Senford Property Financing Motion") (collectively, the "Financing Motions"). By way of the Virgil Property Financing Motion, the Debtor seeks authorization: (i) to obtain a \$971,615 refinance loan from Equity Wave Financing ("Equity") pursuant to §§ 363 and 364, (ii) grant Equity a first-priority deed of trust against the Virgil Property, and (iii) pay off both Seterus' (\$882,107) and Mr. Gordon's liens in full (\$50,000).

The material terms of the refinance loan are as follows:

Loan Amount: \$971,615  
Term: 3-year Fixed Rate Mortgage  
Interest Rate: 8.50-9.50%

See Virgil Property Financing Motion, Ex. A. In addition, Mr. Gordon delivered to the Debtor an e-mail confirmation, accepting \$50,000 in satisfaction for his junior lien against the Virgil Property. See *id.*, Ex. B. Next, as set forth in the Senford Property Financing Motion, the Debtor seeks authorization: (i) to obtain a post-petition finance loan of \$320,000 from Equity pursuant to §§ 363 and 364, (ii) grant Equity a second-priority deed of trust against the Senford Property (junior to Mr. Gordon's senior lien of \$285,000), and (iii) reinstate the property tax lien owed to the LACTTC in the sum of \$97,939. The Debtor states that Equity is unrelated to the Debtor and its insiders or affiliates.

The material terms of the financing loan are as follows:

Loan Amount: \$320,000  
Term: 40-year amortization; 3-year balloon  
Interest Rate: 7.25%  
Lender Fee: \$1,495

See Senford Property Financing Motion, Ex. A.

Furthermore, the Debtor asserts that remaining loan proceeds will be deposited in a DIP bank account, along with the balance of the Virgil Property refinance loan, and applied against the following claims in full, as follows:

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- i. Internal Revenue Service ("IRS"): \$400 (Claim No. 3);
- ii. Franchise Tax Board ("FTB"): \$2,542 (Claim No. 2);
- iii. Playa Vista Parks HOA ("Playa HOA"): \$70,080 (Claim No. 4);
- iv. Villa d'Este HOA ("Villa"): \$31,855 (Claim No. 6).

The Debtor argues that the above-described post-petition financing is in the best interests of all creditors and the estate as it will enable it to fully pay-off both lienholders on the Virgil Property, resolve the upcoming foreclosure matter with Seterus, address LACTTC's property tax lien on the Senford Property, and generate sufficient funds to pay outstanding debts in full. The Debtor's vice president and 40% shareholder, Sandra McBeth provided a declaration in support of the Financing Motions stating that she has spent numerous hours and expended good faith efforts attempting to get financing and believes that these loans are the best that the Debtor can do.

Responses to the Financing Motions

On December 12, 2019, Nationstar Mortgage LLC dba Mr. Cooper ("Nationstar") filed a response to the Virgil Property Financing Motion. Nationstar states that it does not oppose the Virgil Property Financing Motion, provided that Nationstar is fully paid at the time of the "closing of the sale." Accordingly, Nationstar requests that the Court include certain language in its final order requiring that Nationstar's lien "...will be paid in full as of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from [Nationstar]." Secured creditor, Villa d'Este Maintenance Corporation ("Villa"), lodged a similar response on December 20, 2019. Villa acknowledges that the Financing Motions will enable Debtor to pay off four creditors, including Villa. However, Villa is concerned that Debtor has not affirmatively expressed an intention to use the borrowed funds to satisfy these claims. As such, Villa does not object to the Financing Motions insofar that the Court issue orders requiring Debtor to pay creditors from the loan proceeds.

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

**II. Findings of Fact and Conclusions of Law**

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Section 364 governs the obtaining of credit or incurring of debt by a debtor in possession and sets forth the incentives that may be offered to induce potential lenders to extend post-petition credit. *In re Stanton*, 248 B.R. 823, 828 (B.A.P. 9th Cir. 2000) *aff'd*, 285 F.3d 888 (9th Cir. 2002) *opinion amended and superseded on denial of reh'g*, 303 F.3d 939 (9th Cir. 2002) and *aff'd*, 303 F.3d 939 (9th Cir. 2002). Section 364 provides in relevant part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Based on its review of the declaration of Debtor's vice-president, Sandra McBeth, the Court determines that the Debtor has been unable to obtain financing on terms more favorable to the terms of the Equity loans, and thereby the Financing Motions are in the best interests of creditors and the estate. Secured creditors will be adequately protected because loan proceeds will be sufficient to pay all secured claims and tax liens in full, with the exception of Mr. Gordon's \$285,000 senior lien against the Senford Property. Based on the material terms of the Equity loans, the Debtor will obtain loan proceeds in the approximate sum of \$1,291,615, which will be sufficient to pay both secured liens encumbering the Virgil Property (totaling \$932,107) [Note 1], as well as fully satisfying secured claims held by the IRS, the FTB, Playa HOA,

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and Villa (totaling \$104,877). The Court further finds that Mr. Gordon's lien will be adequately protected as it will retain its senior priority over the proposed Equity lien. In any case, as indicated by his confirmation e-mail attached as Exhibit B to the Virgil Property Financing Motion, Mr. Gordon approved Debtor's proposed refinance of the Virgil Property and did not object to the Senford Property Financing Motion [**Note 2**].

### **III. Conclusion**

Based on the foregoing, the Financing Motions are GRANTED. As set forth above, the Debtor shall distribute the proceeds generated from the Equity loans to secured creditors and pay any reasonable fees and costs associated with closing the Equity loans. To expedite the closing of the financing loans, the order approving the Financing Motions shall take effect immediately upon entry, notwithstanding Bankruptcy Rule 6004(h). All other relief requested but not specifically granted above is denied.

The Debtor shall submit two conforming orders, one for each of its motions, incorporating this tentative ruling by reference, within seven days of the hearing.

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

**Note 1:** The Debtor identifies the senior lienholder on the Virgil Property as Seterus, but Nationstar has previously filed briefing in this case stating that it is the first-priority lienholder on the Virgil Property by virtue of a recorded first deed of trust on the property. *See, e.g.*, Doc. No. 118. In its response, Nationstar re-asserts this claim, but neither Debtor nor Nationstar have explained this discrepancy. Consequently, the Court remains unclear as to the identity of the party validly holding the senior lien on the Virgil Property. To the extent that these parties understand this ambiguity, the Court directs the Debtor to pay all liens encumbering the Virgil Property in full, as



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contemplated in the moving papers.

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**Note 2:** The Court deems the failure to file a response or opposition as consent to granting the Financing Motions pursuant to Local Bankruptcy Rule 9013-1(h).

<b>Party Information</b>
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**Debtor(s):**

United International Mortgage

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

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**2:18-20698 United International Mortgage Solutions, Inc.**

**Chapter 11**

**#105.00** HearingRE: [143] Motion Notice of Motion and Motion for Order: (1) Authorizing Debtor to Obtain Postpetition Financing of its Real Property (1258 N. Virgil Ave., Los Angeles, CA) Pursuant to 11 U.S.C. §§363 and 364; (2) Granting Lien to Postpetition Lender Pursuant to 11 U.S.C. §364 and (3) Authorizing Payment of Secured Debt; Declaration of Sandra McBeth in Support Thereof, with Proof of Service

Docket 143

**Tentative Ruling:**

1/6/2020

See Cal. No. 104, incorporated in full by reference.

**Party Information**

**Debtor(s):**

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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**2:19-16078 David Christopher Brady**

**Chapter 11**

**#106.00** HearingRE: [98] Application for Compensation for Leslie A Cohen, Debtor's Attorney, Period: 5/24/2019 to 11/30/2019, Fee: \$69,633.00, Expenses: \$1,643.50.

Docket 98

**Tentative Ruling:**

1/6/2020

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

Fees: \$69,633.00

Expenses: \$1,643.50

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

**Party Information**

**Debtor(s):**

David Christopher Brady

Represented By  
Leslie A Cohen

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**2:18-10616 Manuel Macias**

**Chapter 7**

**#107.00** HearingRE: [42] Motion to Approve Compromise Under Rule 9019 Trustee's Notice of Motion and Motion to Approve Compromise; Memorandum of Points and Authorities, Declaration of Brad D. Krasnoff, and Request for Judicial Notice in Support Thereof with Proof of Service (D'Alba, Michael)

Docket 42

**Tentative Ruling:**

1/6/2020

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

**Pleadings Filed and Reviewed:**

- 1) Trustee's Notice of Motion and Motion to Approve Compromise (the "Motion") [Doc. No. 42]
  - a) Notice of Hearing on Trustee's Motion to Approve Compromise [Doc. No. 43]
- 2) No opposition to the Motion is on file

**I. Facts and Summary of Pleadings**

The Chapter 7 Trustee (the "Trustee") seeks approval of a settlement agreement between the estate, on the one hand, and Steven Molina and Janet Estrada (collectively, the "Defendants"), on the other hand (the "Settlement Agreement"). No opposition to the Motion is on file.

On May 1, 2019, the Trustee filed a complaint against the Defendants (the "Complaint"), seeking to avoid and recover the transfer of property commonly known as 11468 Esther Street, Norwalk, CA 90650 (the "Norwalk Property"). The material allegations of the Complaint are as follows:

- 1) As of July 7, 2011, the Debtor held fee title to the Norwalk Property. By a grant deed recorded in Los Angeles County on May 23, 2012, the Debtor transferred the Norwalk Property to himself and Janet Estrada (the "2012 Transfer"). The grant deed described the 2012 Transfer as a bona fide gift for which the grantor received nothing in return.

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**Manuel Macias**

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- 2) By a grant deed recorded in Los Angeles County on November 24, 2015, the Debtor and Estrada transferred the Norwalk Property to the Debtor, Estrada, and Steven Molina (the "2015 Transfer"). The grant deed described the 2015 Transfer as a bona fide gift for which the grantor received nothing in return.
- 3) By a grant deed recorded in Los Angeles County on October 3, 2016, the Debtor, Molina, and Estrada transferred the Norwalk Property to Molina and Estrada (the "2016 Transfer," and together with the 2012 Transfer and the 2015 Transfer, the "Transfers"). The grant deed described the 2016 Transfer as a bona fide gift for which the grantor received nothing in return.

Based upon the foregoing allegations, the Complaint seeks avoidance of the Transfers and turnover of the Norwalk Property, pursuant to §§ 542, 544(b), 548(a)(1)(A), and 548(a)(1)(B), and 550(a).

On June 19, 2019, the Clerk of the Court entered defaults against both Defendants. After the Defendants opposed the Trustee's Motion for Default Judgment, the Court ordered the Defendants to file motions to set aside their defaults. The hearing on Defendants' motions to set aside their defaults have been continued to allow the Trustee and the Defendants to negotiate the Settlement Agreement.

The material terms of the Settlement Agreement are as follows:

- 1) Defendants will transfer the Norwalk Property to the Trustee by quitclaim deed.
- 2) The Trustee will market and sell the Norwalk Property with the assistance of a Court-approved real estate broker.
- 3) Net sale proceeds of the Norwalk Property will be split 50%-50% between the Trustee and the Defendants.
- 4) While the Norwalk Property is being marketed, Defendants will be permitted to collect rental income from tenants residing at the Norwalk Property. Defendants will be required to remain current on the property's mortgage, taxes, and insurance.

## **II. Findings and Conclusions**

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c)

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**Manuel Macias**

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the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

*Complexity of the Litigation*

This factor weighs in favor of approving the Settlement Agreement. Although not especially complex, prosecution of the litigation would still result in the accrual of administrative costs that would reduce the recovery to unsecured creditors.

*Probability of Success on the Merits*

This factor weighs in favor of approving the Settlement Agreement. The Defendants have asserted that the Trustee's § 544 claim fails with respect to the 2012 Transfer because there is no creditor who could avoid that transfer under applicable state law. The Defendants have raised colorable arguments and there can be no certainty that the Trustee would prevail in the litigation.

*Paramount Interests of Creditors*

This factor weighs in favor of approving the Settlement Agreement. The Settlement Agreement will generate funds for the estate while avoiding additional costly litigation.

The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

*Difficulties To Be Encountered in the Manner of Collection*

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The subject of the action is the Norwalk Property, against which the Trustee has recorded a *lis pendens*. This factor is neutral.

**III. Conclusion**

Based upon the foregoing, the Motion is GRANTED and the Settlement Agreement is APPROVED. Within seven days of the hearing, the Trustee shall submit a proposed order incorporating this tentative ruling by reference.

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

<b>Party Information</b>
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**Debtor(s):**

Manuel Macias

Represented By

Jennifer Ann Aragon - SUSPENDED -

**Trustee(s):**

Brad D Krasnoff (TR)

Represented By

Eric P Israel

Michael G D'Alba